

2705

No. 13039

United States
Court of Appeals
for the Ninth Circuit.

Serial 2704

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, a National Bank-
ing Association, and EUGENE J. O'RILEY,
as Trustee in Bankruptcy of the Estate of
UNITED PRODUCE COMPANY, a Corpo-
ration, Bankrupt,

Appellants,

vs.

MERCHANDISE NATIONAL BANK OF CHI-
CAGO, a National Banking Association,

Appellee.

SUPPLEMENTAL
Transcript of Record

Volume IV
(Pages 1157 to 1285)

Appeals from the United States District Court,
Northern District of California
Southern Division.

FILED

NOV 14 1951

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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PLAINTIFF'S EXHIBIT NO. 2

GENERAL LEDGER DEBIT

CONTRA Suspense Liabilities
Administration

Accounting Dept. S. F. Hdqtrs. ~~Branch~~

November 19 48

\$ 113,216.50

COM. DEPT.

SAV. DEPT.

Total of Collection letter of East Bakersfield Branch

#419 to Merchandise National Bank, Chicago for which

they have credit advice and are sending their

debit. This debit requested by Mr. Estribou
per telephone call to Mr. Geo. Schilling, Legal

~~Department~~

CASE NO. 28721-R PLAINTIFF'S EXHIBIT No. 1 (found)
DEPENDENT'S

IN THE MATTER OF Overstanie v. Bank of Am.

DATE 10/5/49 WITNESS Tabax

APPROVED
SIGN HERE

Debit Merchandise National Bank
Chicago.

TELLER

MISC-1 10-46

Filed June 18, 1950.

PLAINTIFF'S EXHIBIT No. 5

Extract from Deposition of Frederick C.

Messenger—Pages 568-572

“No. 58840, dated 11/1/48, due 12/3/48, in the amount of \$57,870.32, Fifty-seven Thousand Eight Hundred Seventy Dollars and Thirty-two cents, 5%. Accounts receivable, and sundry collateral.

“No. 58850, dated 11/3/48, due 12/3/48, Thirty Days, in the amount of \$60,457.24, Sixty-Thousand Four Hundred Fifty-seven Dollars and Twenty-four Cents, at 5%. Accounts receivable, and sundry collateral.

“No. 58868, dated 11/3/48, due 12/3/48, Thirty Days, in the amount of \$70,628.40, Seventy-Thousand Six Hundred Twenty-eight Dollars and Forty Cents, at 5%. Accounts receivable, and sundry collateral.

“No. 58889, dated 11/4/48, due 12/3/48, Twenty-nine Days, in the amount of \$42,892.26, Forty-two Thousand Eight Hundred Twenty-nine Dollars and Twenty-six Cents, at 5%. Accounts receivable, and sundry collateral.

“No. 58912, dated 11/5/48, due 12/3/48, Twenty-eight Days, in the amount of \$108,581.58, One Hundred Eight Thousand Five Hundred Eighty-one Dollars and 58/100, at 5%. Secured by an assignment of accounts receivable dated 11/5/48, together with various subsequent assignments, and sundry collateral.

“No. 58913, dated 11/5/48, due 12/3/48, Twenty-eight days, in the amount of \$200,000.00, Two Hun-

Plaintiff's Exhibit No. 5—(Continued)

dred Thousand Dollars and no Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48, together with various subsequent assignments, and sundry collateral.

“No. 58935, dated 11/6/1948, due 12/3/48, Twenty-seven days, in the amount of \$52,124.91, Fifty-Two Thousand One Hundred Twenty-Four Dollars and 91/100, at 5%. Secured by an assignment of accounts receivable dated November 5th, 1948, together with various subsequent assignments, and sundry collateral.

“No. 58957, dated Nov. 8, 1948, due 12/3/48, Twenty-five days, in the amount of \$84,787.69, Eighty-Four Thousand Seven Hundred Eighty Seven Dollars and 69/100, at 5%. Secured by an assignment of accounts receivable dated November 5, 1948, together with various subsequent assignments, and sundry collateral.

“No. 58986, dated 11/9/48, due 12/3/48, Twenty-four days, in the amount of \$73,314.39, Seventy Three Thousand Three Hundred Fourteen Dollars and Thirty-Nine Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48 together with various subsequent assignments, and sundry collateral.

“No. 59010, dated 11/10/48, due 12/3/48, Twenty-three days, in the amount of \$79,675.31, Seventy-Nine Thousand Six Hundred Seventy-Five Dollars and Thirty-One Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48, together

Plaintiff's Exhibit No. 5—(Continued)

with various subsequent assignments, and sundry collateral.

“No. 59033, dated 11/10/48, due 12/3/48, Twenty-three days, in the amount of \$15,636.42, Fifteen Thousand Six Hundred Thirty Six Dollars and Forty Two Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5, together with various subsequent assignments, and sundry collateral.

“No. 59079, dated Nov. 12, 1948, due 12/3/48, Twenty-one days, in the amount of \$72,102.87, Seventy Two Thousand One Hundred Two Dollars and 87/100, at 5%. Secured by an assignment of accounts receivable dated November 5, 1948, together with various subsequent assignments and sundry collateral.

“No. 59080, dated 11/12/48, due 12/3/48, Twenty-one days, in the amount of \$56,853.89, Fifty-Six Thousand Eight Hundred Fifty Three Dollars and Eighty Nine Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5, together with various subsequent assignments, and sundry collateral.

“No. 59098, dated 11/13/48, due 12/3/48, Twenty days, in the amount of \$88,864.36, Eighty-eight Thousand Eight Hundred Sixty-Four Dollars and Thirty-six Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48 together with various subsequent assignments, and sundry collateral.

“No. 59099, dated 11/13/48, due 12/3/48, Twenty days, in the amount of \$72,190.57, Seventy-two

Plaintiff's Exhibit No. 5—(Continued)

Thousand One Hundred Ninety Dollars and Fifty-seven Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48 together with various subsequent assignments, and sundry collateral.

“No. 59115, dated 11/15/48, due 12/3/48, Eighteen days, in the amount of \$58,293.55, Fifty Eight Thousand Two Hundred Ninety Three Dollars and Fifty Five Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48, together with various subsequent assignments, and sundry collateral.

“No. 59153, dated 11/16/48, due 12/3/48, Seventeen days, in the amount of \$92,835.94, Ninety Two Thousand Eight Hundred Thirty Five Dollars and Ninety Four Cents, at 5%. Secured by an assignment of accounts receivable dated 11/5/48, together with various subsequent assignments, and sundry collateral.”

Due 12/3/48, No. 58840.

Chicago, Ill., 11/1/48

\$57870.32

Thirty Two Days After Date, for Value Received, the undersigned, jointly and severally, promise(s) to pay to the order of the Merchandise National Bank of Chicago, at its office in Chicago, Illinois, Fifty-Seven Thousand Eight Hundred Seventy Dollars and Thirty-Two Cents, with interest thereon

Plaintiff's Exhibit No. 5—(Continued)

at the rate of 5% per cent per annum from date to maturity, and seven per cent thereafter until paid.

To secure the payment of this note, and of any and all other indebtedness, obligation or liability of the undersigned to the holder hereof due or to become due, whether direct or indirect, absolute or contingent, joint or several, and whether heretofore or hereafter contracted or existing and wheresoever and howsoever acquired by said holder or created, arising or evidenced, the undersigned jointly and severally hereby deposit(s), transfer(s), pledge(s) and deliver(s) to Merchandise National Bank of Chicago the following property, to wit: Accounts Receivable, and Sundry Collateral together with any and all other property of the undersigned, or any of them, of every kind and description now or hereafter and howsoever in the possession or control of, or in transit to or from said holder hereof.

The undersigned hereby, jointly and severally, agree(s) that upon breach of any of the promises herein contained, or upon failure to pay any of said other indebtednesses, liabilities or obligations when due, or in the event that said collateral shall depreciate in value in the opinion of the holder hereof so that it becomes inadequate security, or if said holder shall feel unsafe or insecure for any reason whatsoever, said holder may thereupon, or at any time or times thereafter, sell, and the said holder is hereby given full and irrevocable power and authority to sell, assign and deliver

Plaintiff's Exhibit No. 5—(Continued)

the said property or any part thereof, and any substitute therefor and any additions thereto, at any Brokers' Board, or at public or private sale, without notice, advertisement, or demand of any kind to anyone and without prejudice to any other remedies afforded by this instrument, and may apply the net proceeds, after deducting all costs and expenses for collection, sale and delivery, to the payment of this note and/or of any or all of said indebtednesses, liabilities or obligations whether then due or not due, returning the residue to the undersigned or any of them on demand; the undersigned hereby agreeing to remain jointly and severally liable for, and to pay forthwith any deficiency remaining unpaid after such application. Said holder hereof may purchase any of said property at any such Brokers' Board or public sale. At any time, whether in case of decline in the market value of said property or any part thereof, or otherwise, the holder hereof may demand the pledge and delivery of additional property of quality and amount satisfactory to said holder; and the failure on the part of any of the undersigned to deliver such additional property on demand, shall cause this note and all other indebtednesses, liabilities and obligations of the undersigned to the holder to become due and payable on demand. At any time, whether in case of the insolvency of the undersigned or otherwise, and without notice or demand of any kind, any indebtedness owing by the said holder hereof to any or all of the undersigned or to any endorser or guarantor and/or any property held for them, or

Plaintiff's Exhibit No. 5—(Continued)

any of them, of whatsoever kind or description, may be by said holder appropriated and applied hereon, or on any other indebtedness, liability or obligation owing the holder, direct or indirect, absolute or contingent, as well before as after the maturity hereof or thereof. The said holder is hereby expressly empowered at any time or times hereafter and without notice to anyone, to receive, collect, compromise, renew, extend, substitute, exchange, surrender or release to any party hereto, or otherwise deal with, or to refrain from exercising any of the aforesaid powers or any of a pledgee's duties in respect to, said property or any part thereof, and in respect to any substitute therefore and any additions, dividends, distributions, coupons, interest, rights and accruals thereto, without liability of any kind on the part of the said holder and without in any manner releasing the obligations of any of the undersigned to the said holder. The undersigned, whether principal, surety, guarantor or party hereto in any capacity, jointly and severally, hereby agree(s) and assent(s) to any renewal or extension of time of payment or performance of any of the conditions of this note and to the addition of one or more signatures above or below my or our signature; agree(s) that it shall not be necessary for the holder to resort to legal remedies against any of the undersigned before proceeding against any other of the undersigned; and agree(s) that no release of one or more makers whether by operation of law or by

Plaintiff's Exhibit No. 5—(Continued)

any act of the said Bank or holder of this note shall release any other maker; waive(s) notice of any election, acceptance, demand, protest, notice of protest and notice of default, presentment for payment and diligence in collection; and agree(s) that if this note is placed in the hands of an attorney for collection in the event of default in any of the terms and conditions hereof, to pay, in addition to principal and interest, according to the tenor of this note, fifteen per cent (15%) of said principal and interest as and for attorneys' fees and collection expense. And to further secure the payment of this obligation, the undersigned, whether principal, surety, guarantor or party hereto in any capacity, hereby authorize, irrevocably, any attorney of any Court in the United States to appear for the undersigned in such Court, in term time or vacation, at any time hereafter, and confess a judgment against any one or more or all of the undersigned, without process, in favor of the holder of this Note for such amount as may appear to be unpaid thereon, together with costs and reasonable attorneys' fees and to waive and release all errors which may intervene in any such proceedings, and to consent to immediate execution upon such judgment, hereby waiving personal service of such execution and hereby ratifying and confirming all that said attorney may do by virtue hereof. If there are two or more signers to this

Plaintiff's Exhibit No. 5—(Continued)
note and power of attorney, the foregoing power
is joint and several.

Address: 1421 So. Aberdeen.

UNITED PRODUCE
COMPANY,

/s/ [Indistinguishable.]
Secretary Treasurer.

[Longhand in top margin]: 5/2.

[Longhand in foot margin]: 12/15.

[Endorsed]: Filed July 14, 1949. Referee.

[Endorsed]: Filed June 16, 1950.

ASSIGNMENT

collateral security to assure the payment of a loan or loans about to be made to or renewed for assigned by the MERCHANDISE NATIONAL BANK OF CHICAGO, (hereinafter designated "BANK") and also of any present or future indebtedness, liability or obligation of the undersigned to the BANK, whenever and howsoever and hereby created, the undersigned, FOR VALUE RECEIVED, hereby assigns, transfers, sets over and pledges unto the BANK all the right, title and interest of the undersigned not only in and to the sums specified on the signed schedule hereto attached, bearing even date herewith, marked Exhibit A (and hereby made a part hereof) due and to become due the undersigned from the persons, firms and corporations named in said schedule but, as well, in and to any returned goods, property, securities, guarantees, indemnities, rights or liens (and the avails and benefits therefrom) in connection therewith now held by the undersigned or to which the undersigned is now or may hereafter become entitled or may hereafter receive or acquire.

The undersigned expressly warrants:

- (1) That the names and the sums in said schedule specified exactly describe existing, unconditional, valid and enforceable indebtednesses by solvent debtors, each of which such indebtednesses appears of record on the books of account of the undersigned, is due and payable to the undersigned on the due date thereof in said schedule specified and arises from property actually sold and delivered by, or services fully performed by, the undersigned.
- (2) That there are no extensions or indulgences nor any disputes as to, and no defenses to, nor set-off nor counter-claims against, the payment of such indebtednesses on their respective due dates, nor any prohibitions against, or restrictions as to, this assignment thereof and that no such extension or indulgence thereof nor any settlement, adjustment or compromise of any thereof for less than the full face amount thereof will be given or made without first obtaining the written consent of the BANK.
- (3) That no other assignment of said sums, or any part thereof, has been or will be made and that no right, claim or lien exists with respect thereto superior to the rights, title and interest transferred to the BANK hereunder.
- (4) That, prior to the delivery hereof, all entries on books of account recording the indebtedness assigned hereunder, were stamped with the notation: "Property of MERCHANDISE NATIONAL BANK OF CHICAGO by assignment."

The undersigned further agrees:

- (5) To endorse for collection by the BANK, forthwith, upon their receipt, all checks, drafts, and other instruments received by the undersigned whether in full or partial payment of any indebtedness, right, interest, or anything else assigned hereunder; to immediately deliver the same, in the form in which received, so endorsed, and stay all cash so received, to the BANK, all such receipts to be and remain the property of, and be held by the undersigned merely as the agent of, the BANK until so delivered; and to refrain from exercising any dominion over the same whatsoever and from commingling the same with any other funds or property of the undersigned.
- (6) To pay the BANK the reasonable costs of audits, investigations and collections, including attorney's fees, court costs, travel and communication expenses and all other expenses involved in maintaining and collecting the indebtedness assigned hereunder and to permit deductions therefor by the BANK from any sum received by the BANK on any item assigned hereunder.
- (7) That, when duly executed, the mere delivery of this instrument and the schedule aforesaid, shall operate to perfect the transfer and pledge to the BANK intended thereby without either the BANK or the undersigned giving notice of this assignment to the debtors whose indebtednesses are assigned hereunder, notwithstanding any rule of law or in equity, whereover the jurisdiction, requiring that notice be so given in order to perfect such transfer and pledge.
- (8) Forthwith, whenever requested by the BANK so to do: to send to the debtors whose indebtednesses are assigned hereunder, a notice by United States registered mail in such form as the BANK shall require, advising that all of the right, title and interest of the undersigned therein has been assigned to the BANK and that all payments thereafter should be made direct to the BANK; to furnish the BANK copies of invoices identical with those actually rendered said debtors and, as well, evidence competent to prove full performance or actual delivery to the debtor involved; to give the duly accredited representatives of the BANK free access to the premises and all records of the undersigned for the purpose of verifying the said indebtednesses and/or ascertaining the financial condition of the undersigned and for the purpose of receiving, receipting for and opening all mail addressed to the undersigned, all of which the BANK by its said representatives is hereby expressly authorized so to do; and, further, to deliver to the BANK such instruments of further assurance as it may require to carry out the intent hereof.
- (9) That all rights, powers, privileges and remedies of the BANK shall be cumulative and no failure or delay to enforce or exercise any of the same shall operate as a waiver or release thereof.

The undersigned hereby expressly authorizes and empowers the BANK, in its discretion and without notice to or other or further consent by the undersigned:

- (10) To ask, demand, collect, receive, compound, compromise, adjust, grant extensions of time of payment of, and give acquittances for, any and all sums assigned hereunder or any part thereof, now or hereafter due, and to enforce the payment thereof by suit, or otherwise, either in its own name or the name of the undersigned. Notice of presentation for payment, of non-payment and dishonor and diligence in collection and all formalities legally required to charge it with liability hereunder are hereby expressly waived by the undersigned.
- (11) Even though the then indebtedness, liability or obligation of the undersigned to the BANK be otherwise not due, to charge the undersigned's account with the BANK with all sums not paid by debtors on the due dates in said schedule specified and with the full amount of any assigned indebtedness as to which any goods have been returned or any extension or indulgence given by the undersigned or any set-off or counter-claim asserted or any dispute or defense arises.
- (12) To credit all moneys received by it hereunder against any and all indebtedness, liability or obligation of the undersigned to the BANK, direct or indirect, absolute or contingent, or to hold all or any part of such moneys as non-interest bearing collateral securing any such indebtedness, liability, or obligation.

The undersigned hereby irrevocably constitutes and appoints the Cashier or any Assistant Cashier of the BANK his or its lawful attorney with full power to endorse the name of the undersigned upon any notes, checks, or any other evidence of payment of anything assigned hereunder and to do and perform, and cause to be done and performed, any act or thing necessary or appropriate to carry out the purposes and intent hereof.

This instrument, delivered at Chicago, Illinois, shall be deemed executed and to be performed in Illinois and, even if executed or to be performed elsewhere, shall nevertheless be construed and given effect according to those laws of the State of Illinois which are applicable to contracts that are not only executed in, but are also delivered and performed in, Illinois and all its terms and provisions shall be binding upon the undersigned, his or its legal representatives, successors and assigns and shall inure to the benefit of said BANK, its successors and assigns.

IN WITNESS WHEREOF the undersigned has duly executed this instrument or has caused this instrument to be duly executed by its proper officers, all duly authorized in the premises, this 5th day of November 1946

(CORPORATE SEAL)

ATTEST:

UNITED PRODUCE CO

(SEAL)

By

PLAINTIFF'S EXHIBIT No. 7

Agreement

In receiving and handling items for deposit or collection (including items received in payment of collections) this Bank acts only as depositor's collecting agent and assumes no responsibility beyond the exercise of due care. All items are credited or cashed subject to final payment in cash or solvent credits. This Bank will not be liable for default or negligence of its correspondents, nor for losses in transit, and no correspondent shall be liable except for its own negligence.

It is optional, but not obligatory, to request certification in any case. This Bank or its correspondents may, as depositor's agent, send items, directly or indirectly, to any bank or to any drawee, acceptor or payor, and accept draft, check or credit as conditional payment in lieu of cash. It may charge back any item at any time before final payment, whether returned or not, also any item drawn on this Bank not good at close of business on day deposited. It may decline to honor or pay checks drawn against conditional credits.

This Bank shall have a lien on all items handled by it and on the proceeds thereof for its charges, expenses (including court costs and attorneys' fees) and any advances made by it in connection therewith.

It may transmit any item for collection to any Federal Reserve Bank and such item shall be subject to the rules and regulations of such Federal

Reserve Bank or of the Federal Reserve Board now in force or hereafter promulgated.

Items payable in the City of Chicago, or in any suburb thereof, may be collected directly or indirectly through the Chicago Clearing House Association (in which event they may be carried over for presentation on the following business day) and will be subject to its rules and regulations now in force or hereafter adopted, or they may be collected in any manner hereinbefore provided or contemplated.

This Bank endeavors to forward items payable outside of Chicago on day of receipt, but it is understood that they need not be forwarded until the following business day.

[Endorsed]: Filed June 16, 1950.

PLAINTIFF'S EXHIBIT NO. 9

COMMERCIAL

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

DEPOSITED FOR ACCOUNT OF

FRANK C LOFENDO
BAKERSFIELD INN

DATE **NOV 70** ADDRESS **1111 11 48**

CURRENCY (DETAIL ON REVERSE)	COIN	CHECKS (PROPERLY ENDORSED)	DOLLARS						CENTS	
		1	18	4	2	6			00	
		2	15	6	4	5			00	
		3	17	9	7	6			00	
		4	24	6	9	2			00	
		5	20	0	3	1			00	
		6	18	4	2	6			00	
		7	113						216	50
		8								
		9								
		10								

R-3 1-46

[Endorsed]: Filed June 19, 1950.

PLAINTIFF'S EXHIBIT No. 10

[13039]

November 18, 1948

Bank of America N. T. & S. A.,
300 Montgomery Street,
San Francisco 20, California.

Gentlemen:

This will confirm our conversation of today in which you were authorized to return the following items without protest:

\$38,682.27	\$31,755.56
31,258.66	38,044.91
44,070.85	28,385.05
39,333.51	25,819.49

all of these items having been included in our cash letter of November 12, 1948, totaling \$169,152.10 and our cash letter of November 13, 1948, totaling \$165,818.75. We understand that these items were received by you November 15, 1948, and were sent by you to your Bakersfield Branch (#415) in your cash letter dated November 15, 1948, totaling \$814,-163.86.

We also confirm instructions to return without protest items in amount of \$27,842.65 and \$28,325.50 which were received by you in our cash letter of November 15, 1948, totaling \$114,310.33, which items, we understand, were sent by you to your Bakersfield Branch (#415) in your cash letter dated November 17, 1948.

You are also authorized to return without protest or presentation the following three items:

\$29,652.91

35,807.43

25,316.35

received by you on November 18, 1948, in our cash letter of November 16, 1948, totaling \$151,093.86.

A collection letter of the East Bakersfield Branch (#419) of the Bank of America N. T. & S. A., No. C-419-4768, containing the following checks of the United Produce Company endorsed: "Frank C. Lofendo":

\$18,426.00

\$17,976.00

20,031.00

15,665.00

22,692.50

18,426.00

totaling \$113,216.50 was received by us on November 15, 1948, and, in error, an advice of credit for the items was mailed on November 16, 1948. The items numerated above totaling \$113,216.50 are not being accepted by us and will be returned to the East Bakersfield Branch (#419) of the Bank of America N. T. & S. A., and this letter will serve as your authority to return our credit advice, which was sent to you in error and which has not yet been received by your East Bakersfield Branch, without action.

Thanking you for your cooperation in this matter,
we are

Very truly yours,

MERCHANDISE NATIONAL
BANK, CHICAGO, ILLINOIS,

By /s/ R. LeROY,
Vice President.

[Endorsed]: Filed June 19, 1950.

PLAINTIFF'S EXHIBIT NO. 11

Bank of America
NATIONAL EXCHANGES ASSOCIATION

November 18

1949

Banks and Bankers Department
From San Francisco Headquarters
BRANCH OR DEPARTMENT AND HEADQUARTERS

Subject

Mr. F. E. Estribou, Manager
East Bakersfield Branch (419)
Bakersfield, California

Dear Mr. Estribou:

This is to confirm our various telephone conversations of today. I am enclosing a signed copy of a letter given to us today by Mr. A. R. LeRoy, Vice President of the Merchants National Bank, Chicago, Illinois. The original we are maintaining for our files. I believe you will find the letter to be self-explanatory.

During your telephone conversation this afternoon with Kenneth M. Johnson, Assistant Counsel of our Legal Department, you were informed of our bank's position in this case, namely, we must recognize their instructions.

Mr. LeRoy will have called on you tomorrow before you receive this letter. From what he told me today, it does not look too encouraging for them and any assistance you are able to give him will certainly be appreciated.

Every indication points to your office coming out O.K., and from what you said, my hat's off to you. For your information, I just finished talking to our Fresno Office and everything appears to be in the clear there also.

Regards.

Sincerely,

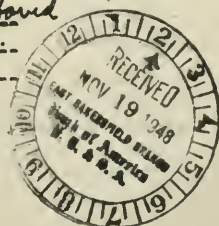
Roland T. Duncan
Roland T. Duncan
Assistant Vice President

Enclosure

CASE No. 28724-R PLAINTIFF'S EXHIBIT No. 29 David
IN THE MATTER OF Merchants National Bank v. Bank of America
DATE 1/31/49 WITNESS Petrikow

Plf's 29 is

[Endorsed]: Filed June 19, 1950.



P. 3
CREDIT MEMORANDUM

East Bakersfield

Oct. 22, 1948

SUBJECT: UNITED PRODUCE CO. AND FRANK C. LOFENDO

It has been brought to my attention of unusual operations between the two subject parties. Frank Lofendo, who has an account at this Branch, has been making deposits consisting of checks drawn by United Produce Company on Merchandise National Bank, Chicago, Illinois. The amounts have been averaging medium five figures and seem to be gradually increasing. Upon checking the cancelled checks of Mr. Lofendo, we find that the majority of checks in medium five figures, are made payable to the United Produce Company.

A few days ago, I wired Merchandise National Bank asking for the financial responsibility and the top limit for acceptance of checks on the United Produce Company. Their response was that they loaned them legal limit on secured basis. Net worth of the Company was over \$80,000.00 and that they could not set a limit on acceptance of checks and suggested that we contact our Fresno Main Office, who have complete information on the Company.

Mr. Nelson of Fresno Main Office has been contacted and the information that he gave us was no more than what was contained in our wire response.

This has been taken up with Mr. Estribou, Manager, and he has given instructions that we do not accept these checks for immediate credit until such time as Mr. Lofendo can be contacted and his method of operation discussed.

At the present time Mr. Lofendo is in Chicago and is expected to return in about two weeks.

I. N. Tarr
I. N. Tarr,
Assistant Cashier-Chief Clerk

INT: gld

X
FEE

PBG

JVC

KJC

CASE No. 28721-R

PLAINTIFF'S

DEPENDENT'S

EXHIBIT No. 3

IN THE MATTER OF Merchandise National Bank of America

DATE 9/29/49

WITNESS

Edwards

[Endorsed]: Filed June 19, 1950.

CREDIT MEMORANDUM 28721-R

PLAINTIFF'S
DEPENDENTS

EXHIBIT NO. 7 *Amended*

East Bakersfield

IN THE MATTER OF

DATE 9/29/49

WITNESS *Extraordinary*

Nov. 15, 1948

SUBJECT: FRANK C. LOFENDO

This is in further reference to the activities and operations of the account of Frank C. Lofendo. Shortly after the last memorandum, Mr. Lofendo flew from Chicago with the President of United Produce Company. The matter of his deposits and checks drawn against his account was discussed with Joseph V. Cosgrove, Assistant Manager.

It was my understanding, as a result of this conversation, that it had been agreed that he, Mr. Lofendo, would not draw against his deposits until such time as the items would be cleared. Also, he would endeavor to increase the balance of his account. The account at present appears to be used as a clearance account between United Produce Company and himself. Mr. Cosgrove was apparently satisfied with this arrangement.

This matter was again re-discussed at our Officer's meeting on Wednesday, November 10th and at that time, Mr. Lofendo insisted that all items deposited should be cleared before credit is allowed.

Upon complying with this request, it has been necessary to return many checks for the reason "drawn against uncollected funds". As a result, we have had many long distance calls from Chicago, Philadelphia and San Francisco concerning these.

J. H. Tamm
Assistant Cashier-Office Clerk
LJP

TNT:old

FEE

PAC

WFO

LJP

Enclosed: Filed June 19, 1950.

X

PLAINTIFF'S EXHIBIT No. 14

STIPULATION

From time to time after September 6, 1948, checks drawn by United Produce Co. to the order of F. C. Lofendo came in the mail to the East Bakersfield Branch of defendant in envelopes bearing the imprinted return address of the Bakersfield Inn, Bakersfield, California. (No stipulation is made as to what transpired prior to September 6, 1948.) Accompanying the checks in the enclosing envelope were slips or tags usually called deposit tags, in the form marked as Exhibit 19 on the Estribou deposition, which is hereby placed in evidence as Plaintiff's Exhibit 9. These tags had the name of Frank C. Lofendo on them, together with a list of the accompanying checks with a notation by whom they were drawn, most of them by United Produce Co.

On some occasions when these checks arrived at defendant's Branch immediate credit was entered in the amount of the checks in the Lofendo account. On other occasions no credit was entered in the Lofendo account but the checks upon receipt by defendant Bank were rubber stamped with a notation reading "East Bakersfield Branch, Bank of America, N. T. & S. A. Col... [(with a number inserted in the blank)] Bakersfield, Cal." The "Col." stood for "Collection" and in the blank was inserted the same number as was placed on the collection letter by which the checks were then forwarded for collection. With respect to such

Plaintiff's Exhibit No. 14—(Continued)

checks they were then sent forward to Chicago to plaintiff Bank on which they were drawn, under cover of a collection letter.

On November 13, 1948, six such checks, aggregating \$113,216.50, arrived at defendant's said Branch. These are the checks already marked in evidence as Defendant's Exhibit E. There was then placed upon the checks at defendant's Branch the collection stamp referred to above. No credit for these checks or any part was entered in the account of Lofendo on that day, or thereafter except as hereafter stated. On that day, November 13, 1948, defendant's Branch sent the six checks by a collection letter to plaintiff Bank in Chicago. Def. Exhibit G already placed in evidence is the original of that collection letter.

On November 15, 1948, an employee of plaintiff Bank mailed to defendant an "Advice of Credit," of which defendant's Exhibit A, already in evidence, is the original.

On November 17, 1948, in the afternoon, a telephone conversation occurred between Mr. Messenger, plaintiff's Comptroller, and Mr. Estribou, manager of defendant's East Bakersfield Branch.

On November 18, 1948, Mr. LeRoy, Vice-President of plaintiff Bank, was in the office of defendant at its headquarters in San Francisco and there wrote a letter to defendant Bank, dictating it to a stenographer in defendant's employ, and delivered it to defendant through defendant's Mr. Roland T. Duncan. Mr. Duncan at that time was

Plaintiff's Exhibit No. 14—(Continued)

an assistant vice president of defendant in the Bank and Banker's Division of the Administration Department at its headquarters office in San Francisco.

The letter, marked on the deposition of Mr. Estribou as Exhibit 30, is the letter just referred to and is hereby placed in evidence as plaintiff's Exhibit 10.

On the same day, November 18, after receipt of that letter, Mr. Duncan wrote a letter to Mr. Estribou, signed and mailed it, and enclosed with it a copy of the letter just referred to, plaintiff's Exhibit 10. Exhibit 29 as marked on the deposition of Mr. Estribou is that letter, and is hereby placed in evidence as plaintiff's Exhibit 11. That letter was received by Mr. Estribou at the East Bakersfield Branch at about 2:00 o'clock p.m. on November 19.

The Advice of Credit referred to above arrived through the mail at the San Francisco Head Office of defendant at about 9:00 o'clock in the morning of November 18, in the auditing department but upon its arrival there, that department had no function to perform in relation to it other than to treat it as a misrouted item and forward it to the East Bakersfield Branch where the collection had originated. This was done as a matter of routine by the clerical staff. The advice of Credit was placed in the mail and arrived at the East Bakersfield Branch on November 19 at about 8:15 a.m.

On November 15, 1948, there arrived at defend-

Plaintiff's Exhibit No. 14—(Continued)

ant's East Bakersfield Branch in the same manner as already stated above a group of checks payable to the order of "Frank C. Lofendo" totalling \$97,207. Defendant's Branch entered immediate credit for this amount in the Lofendo account on that day and sent the checks forward by cash letter to its correspondent in Chicago, Continental Illinois National Bank and Trust Company. At the beginning of that day and before the entry of this credit the Lofendo account had in it a credit balance of \$13,061.17. On November 16th, before any other items were entered to the credit of the Lofendo account, defendant's Branch honored three checks which arrived that morning over the signature of Frank C. Lofendo (payable to United Produce Co.) in the amount of \$37,645, \$34,678 and \$37,245, and charged them to the account as of November 15th.

On November 18, 1948, at 4:45 p.m. the East Bakersfield Branch of defendant received a telegram from Continental Illinois National Bank advising it that the checks for \$97,207 had been rejected for lack of funds. Mr. Estribou thereupon investigated his records. Up to that time he had supposed that the credit for the \$97,207 which had been entered in the Lofendo account on November 15th had been entered after the items had gone forward for collection under cover of a collection letter and after collection had been effected. Upon receiving this wire he investigated and found that an officer or employee of the Branch had entered

Plaintiff's Exhibit No. 14—(Continued)

immediate credit on the items on November 15th without waiting for collection.

On November 19th, Mr. Estribou caused to be entered in the Lofendo account a credit in the amount of \$113,216.50. No entry of that credit or any part thereof had theretofore occurred. Concurrently Mr. Estribou caused to be entered in the Lofendo account a debit in the amount of \$97,207 to cover the checks whose rejection had been advised by Continental Illinois National Bank.

At the time the wire from Continental Illinois National Bank was received there were insufficient funds in the Lofendo account to cover a charge back of these rejected checks for \$97,207, the balance in the account being at that time only \$14,925.26.

On November 19, 1948, the plaintiff by its Comptroller wrote and mailed to defendant at its East Bakersfield Branch a letter which the latter received on November 22nd, which is already in evidence as Defendant's Exhibit D, and enclosed with this letter the six checks totalling \$113,216.50. Each of these checks had endorsed upon it the notation "Cancelled in error," the notation being signed "F. C. Messenger, Comptroller."

On October 22, 1948, Mr. I. N. Tarr Assistant Cashier and Chief Clerk of defendant's East Bakersfield Branch, prepared and signed a written memorandum which was then initialled by Mr. Estribou, the branch manager, by Mr. Joseph V. Cosgrove, Assistant Manager, and by other officers of

Plaintiff's Exhibit No. 14—(Continued)

the Branch. The paper marked Plaintiff's Exhibit 3 on the Estribou deposition is a true copy and is hereby placed in evidence as plaintiff's Exhibit 12.

On or about November 15 Mr. I. N. Tarr prepared and signed another memorandum which was also then initialled by Mr. Estribou and other officers of the East Bakersfield Branch. The document marked Plaintiff's Exhibit 7 on the Estribou deposition is a true copy of this memorandum, and it is hereby placed in evidence as plaintiff's Exhibit 13.

Further Stipulation

The records of defendant bank show that from the opening of the "Lofendo" account the deposits to it with few exceptions were checks of United Produce Company.

On November 23, 1948, plaintiff orally made demand on defendant in San Francisco that it pay to plaintiff the entire amount in the plaintiff's account with defendant without deduction of the sum of \$113,216.50. On December 4, 1948, plaintiff by its attorneys delivered to defendant a letter of which Exhibit A attached to defendant's answer in this case is a true copy. This was accompanied by another letter of which Exhibit B attached to defendant's answer is a true copy. Accompanying these letters were the 6 checks, Defendant's Exhibit E, and defendant received them.

On December 10, 1948, plaintiff delivered to de-

Plaintiff's Exhibit No. 14—(Continued)

defendant a letter of which Exhibit C attached to defendant's answer is a true copy.

Among the rules and regulations of defendant bank are certain ones known as Standard Practice Manual 214, 220, 510.5 and 512, which are hereby placed in evidence as Plaintiff's Exhibits 16, 19, 20 and 21.

At the close of business at the defendant's East Bakersfield Branch on November 10, 1948, the Lofendo account had a clear credit balance of \$13,-061.17 all in collected funds.

The only transactions thereafter occurring at the East Bakersfield Branch with respect to that account to and including November 17, 1948, are as follows:

November 11, 1948, was a holiday. On the next business day November 12th, checks totalling over \$57,000 drawn on the account arrived and were rejected for lack of funds and nothing was paid out upon them.

On the next day, Saturday, November 13th, the 6 checks, Defendant's Exhibit E, arrived in the mail and were sent out for collection, no credit being entered, all as stated above.

On November 15th, checks drawn on the Lofendo account totalling \$75,586.86 were received at the branch in the in-clearings. These checks were neither rejected nor paid and were not charged against the account but were physically kept at the branch until November 17, 1948, when they were put in the counter-work.

Plaintiff's Exhibit No. 14—(Continued)

November 14, 1948, was a Sunday. On the next business day, November 15, 1948, two groups of checks payable to "Frank C. Lofendo" arrived at the branch, one for \$97,207 and one for \$52,379. As stated above, immediate credit was entered to the Lofendo account for the \$97,207 but not for the \$52,379, and the latter group of checks was sent out for collection under a collection letter.

On November 16th, there arrived at the branch in the in-clearings three checks drawn on the account totalling \$109,569.15 as stated above. These checks were immediately paid and charged against the account as of November 15th. Immediately prior to the charge there stood to the credit of the account the \$13,061.17 of collected funds and the said credit of \$97,207 of uncollected funds. The branch thus paid \$96,507.98 against uncollected funds.

On the same day, November 16, 1948, the defendant's branch received from plaintiff an advice of credit on a collection for \$89,813.10 which had been sent out by the branch on November 10th. This sum was credited to the account on November 17th, thus reducing the amount paid out against uncollected funds to \$6,694.88.

On November 18, 1948, defendant's branch charged against the Lofendo account, as of November 17th, the checks for \$75,586.86 which had been at the branch since November 15th, thereby increasing the amount paid against uncollected funds to \$82,281.74.

Plaintiff's Exhibit No. 14—(Continued)

When the checks of \$75,586.86 received on November 15th there were insufficient funds in the account to pay them and they were listed on the rejected check register, but by reason of oversight of employees of defendant they were not then rejected or returned to the banks from which they had been received, one of which was the plaintiff.

On November 16, 1948, the posting of the credit of November 15 of the checks for \$97,207 referred to in Plaintiff's Exhibit 14 created an apparent balance in the account against which the three checks for \$75,586.86, which had been held over from November 15th could have been charged, but for some reason which the defendant is unable to explain, they were not. Instead the account was charged with the checks for \$109,569.15 received on November 16th as set forth in Plaintiff's Exhibit 14.

After the making of this charge of \$109,569.15 there were insufficient funds in the account against which to charge the checks for \$75,586.86 (which were still on hand), until the advice of credit for \$89,831.10 was later received from the plaintiff on November 16 and the amount thereof was credited to the account on November 17th and posted on the 18th. Concurrently the checks for \$75,586.86 were charged against the new funds.

[Endorsed]: Filed June 19, 1950.

PLAINTIFF'S EXHIBIT NO. 15

COMMERCIAL

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

DEPOSITED FOR ACCOUNT OF

Frank C. Lofendo

NAME

ADDRESS

DATE

11-19-48

Nov 19 1948

19

CURRENCY (DETAIL ON REVERSE)		DOLLARS					CENTS
COIN							
CHECKS (PROPERLY ENDORSED)							
LIST BY BANK NUMBER SEPARATELY, BELOW, EACH CHECK COMPRISING THIS DEPOSIT.							
Misc. 1	1	113	216	50			
Proceeds of	2						
collection No. 3	3						
419-4768	4						
	5						
	6						
	7						
	8						
	9						

Plaintiff's 5(c) toid
Exhibit

R-2 1-46

[Endorsed]: Filed June 20, 1950.

PLAINTIFF'S EXHIBIT No. 16

Section: Deposits

Sub-Section: Activity of Deposit Accounts

Division: Undesirable Deposit Accounts

No. 214

Date: June 4, 1932.

Subject: Undesirable Deposit Accounts

1. Branch managers are expected to watch their deposit accounts and to make arrangements with depositors for bringing to a profitable basis any which are carried at a loss to the bank or with inadequate profit. This is fully covered in SPM 206.07 and 206.21. Attention must also be given to accounts which are undesirable for other reasons. Depositors must not be permitted to habitually overdraw their accounts or to use them for "kiting" and like transactions. Every effort should be made to hold desirable business and to eliminate unsound conditions. Branch manager should arrange for closing of depositor's account, however, when depositor persists in issuing checks which must be rejected to avoid overdrafts, in "kiting," drawing against uncollected funds, or in other practices which are dangerous to the bank.

2. Undue activity in Savings Deposit accounts must be avoided to extent practicable. Branch manager should endeavor to obtain commercial deposit accounts on a sound basis from savings depositors who make too active use of their savings accounts.

[Endorsed]: Filed June 20, 1950.

PLAINTIFF'S EXHIBIT No. 18

Further Stipulation

In the banking business throughout the United States checks are transmitted by banks to other banks for collection either by means of "cash letters" or "collection letters."

In the case of cash letters, the forwarding bank, when it receives the check from its depositor, gives credit to him at once. The cash letter does not describe individual items, though it may list their amounts, and it usually covers checks drawn by various persons on various banks. A bank to which a cash letter comes gives credit to the forwarding bank for the entire amount of the letter immediately upon receipt of the letter. If any item thereafter is uncollected or unpaid, a charge back may be made of the amount thereof within a given time, the time being prescribed by contract, statute, or rule of a clearing house. In case of a cash letter, the collecting or intermediate bank does not give advice to the forwarding bank of collection but only of rejection. A cash letter contains no instruction on how to remit the funds when collected, and the forwarding bank assumes collection unless advised of rejection.

In the case of a collection letter covering checks, the forwarding bank does not, upon receipt of such check by it, give credit to the depositor or to the bank from which the item comes. The collection letter describes items individually and covers only checks of one drawer. The collection letter contains

instructions on (a) how to remit the funds, when collected, to the forwarding bank, and (b) on how to advise the forwarder of collection. If a letter contains instructions that advice be given of collection or non-collection it is a collection letter. Advice, in the case of a collection letter, is given as to each item individually. Items covered by collection letters do not go through clearing houses. Items covered by cash letters may. In the case of a collection letter the forwarding bank does not assume collection until advised thereof.

Either a cash letter or a collection letter may go to the bank on which the check is drawn.

[Endorsed]: Filed June 20, 1950.

PLAINTIFF'S EXHIBIT No. 19

Section: Deposits

Sub-Section: Receipt of Deposits

Division:

No. 220 (Page 1)

Date: May 28, 1947.

Subject: Receipt of Deposits

1. Checks and drafts on domestic banks and other authorized items (*), properly drawn and which otherwise fulfill sound banking requirements# may be received on deposit for credit of established accounts**, without qualification, to extent warranted by depositor's known reliability and

responsibility or, providing item is known to be genuine, to extent warranted by responsibility of drawer. Credit to an account where such responsibility is not established should be protected by placing of a "hold" on the account.

Memo: Standard procedure for placing a hold is for teller to write in pass book "UCF" (interpreted to customer, if inquiry made, as meaning "Uncollected Funds," —our warning to "Use Caution First") and to stamp "Hold \$. days" (S&S Code 9796) on deposit ticket. "Teller's Deferred Time Schedule" (Tel-51) is provided to record number of days to hold for all points.

"Hold" information must be posted from deposit ticket to lower section of "Stop Payment Folder" (B-116) or if "front feed" bookkeeping machines are used, to "Temporary Hold Order" (B-117). B-116 must be kept over ledger and statement, or B-117 pasted to statement, until the hold expires.

2. Tellers must be on guard to protect the bank from avoidable losses thru fraud, negligence, or error, and especially thru the deposit of fictitious and worthless checks and kiting.

3. Depositor should be asked whether immediate withdrawal is contemplated when a deposit contains:

—out-of-town item(s) larger than depositor's normal balance,

—out-of-town item(s) for recently opened account,

—depositor's own check against an account in another bank.

If Immediate Withdrawal is contemplated, proposed deposit should be referred to an officer for approval. If immediate withdrawal is Not contemplated and deposit is accepted, "Hold" should nevertheless be placed on the account.

[Endorsed]: Filed June 21, 1950.

PLAINTIFF'S EXHIBIT No. 20

Section: Collections

Sub-Section: Outgoing Collection

Division:

No. 510.5 (Page 1)

Date: November 16, 1945.

Subject: Payments for and Return of Outgoing Collections

1. Payments for outgoing collections must be final and in good funds. Drafts on out-of-town points and on other banks or branches must be collected before payment can be considered final. In cases where collection is sent by us to an Intermediary Collecting Bank, which bank under our instructions sends proceeds to another bank for our credit, the account of such depository bank must not be debited upon advice of remittance by

the intermediary bank. Debit may be made Only Against advice received directly from the Depository Bank.

Memo 1: In cases where credit advice from the depository bank is not received promptly when due, "Collection Proceeds Tracer" (C-156) must be sent promptly to such bank Duplicate of this tracer should be sent to Auditing and Inspection Department, Head Office, if depository bank is one of our "Due from" accounts, otherwise to branch where depository bank's "Due to" account is carried. Triplicate should be retained in branch files.

Memo 2: Credit advice from the branch of a correspondent bank is sufficient; confirming advice from such branch's Head Office is not required. Likewise credit advice addressed to our branch which originated the collection is sufficient; confirming advice from our branch or office at which the account is carried is not required.

Memo 3: In cases where a collecting bank has sent telegraphic advice of payment of a non-cash collection but final payment has not been received, or where advice has been received from intermediary collecting bank but not from depository bank, advances may be made to owner, but Only When warranted by the standing of the collecting bank and of the owner.

Any such advances should be charged to "Suspense: Resources," and date and amount re-

corded on Collection Register, together with revised instructions as to disposition of proceeds.

Interest should be charged at prevailing loan rate, counting outstanding time from date of advance in same manner as for "Documentary Drafts" and "Unsecured Drafts," as detailed in SPM 511 paragraph 4, Memo 1. Interest so collected should be credited to "Interest Earned: Loans and Investments."

2. Immediately upon receipt of advice from a correspondent bank, "Due to" or "Due from," showing credit for an outgoing collection, the account of such bank must be debited, using for this purpose "Collection Debit Ticket" (Ac-133). Debit must be made in every case for the exact amount for which credit is advised by the correspondent bank. Two or more collections must not be combined to make one debit when advice shows credit in separate amounts. Likewise, if advice shows credit for more than one amount, the debit should be made for the total, even tho in payment for different items. In such latter case, the collection numbers and amounts of the separate collections should be recorded on back of the debit ticket. Date credited by correspondent bank must be shown on debit ticket in all cases.

Memo 1: Exchange and collection charges deducted by collecting bank, or charged to us by such bank, must be included as a deduction from total collection amount in the case of non-

cash collections; or reimbursement must be obtained from bank's customer in the case of outgoing cash Collections; Except that the obtaining of reimbursement may be waived for items handled by us for correspondent banks when specifically so authorized by Arrangements Book.

Memo 2: Unauthorized deductions by collecting bank must be guarded against, covering items drawn "with exchange," "with collection charges," "payable in New York Exchange," or with similar qualifications.

Memo 3: Controller's Department, Head Office, should be notified, with full particulars, whenever exchange or collection charges made by collecting banks do not agree with schedules shown in Arrangements Book.

[Endorsed]: Filed June 21, 1950.

PLAINTIFF'S EXHIBIT No. 21

Section: Collections

Sub-Section: Outgoing Collections

Division: Outgoing Non-Cash Collections

No. 512 (Page 2)

Date: November 16, 1945.

Subject: Outgoing Non-Cash Collections
(continued)

2. Returns must be final and in good funds (SPM 510.5). Where advice of payment is re-

ceived, if from a correspondent bank, debit ticket must be made to the account of such bank, on "Collection Debit Ticket" (Ac-133; SPM 510.5). Full details of any deductions by collecting bank, and of our charges, must be made on "Branch Permanent Record" copy of Out-Collection Register, and advice copy completed, showing deductions and net amount and date credited. "Paid" stamp (S&S Code 9712) must be imprinted on both copies. Advice copy, showing net amount credited, should be forwarded to depositor. Credit ticket to "Collection Charges" should be made, on Misc-3, detailing the collection number and amount of charges made by us on each collection.

[Endorsed]: Filed June 21, 1950.

PLAINTIFF'S EXHIBIT No. 22

[Plaintiff's Exhibit No. 22 is a Permanent Record to Bank of America Re \$113,216.50, stamped on face a rubber stamp reading "Bank of America N. T. & S. A. Paid November 19, 1948—East Bakersfield Branch, Bakersfield, California."]

Filed June 22, 1950.

PLAINTIFF'S EXHIBIT No. 23

Stipulation Concerning Testimony of
Frank C. Lofendo

Frank C. Lofendo, a resident of Chicago, Illinois, and the man referred to by that name in the evidence in this case, testified by deposition in this case upon subpoena by the plaintiff. Though declining to answer numerous questions on the constitutional privilege against self-incrimination because he is one of the defendants in an indictment pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, entitled "United States of America v. United Produce Company, Ltd., et al.," he did give certain testimony, conveniently summarized as follows:

He was shown and examined the 6 original checks aggregating \$113,216.50, which have already been marked in evidence during the trial as Defendant's Exhibit E. He testified that he had never before seen any of those checks, that he did not place on any of them the rubber stamp endorsement of his name and does not know who did. He does not know when the checks were placed in defendant's East Bakersfield Branch nor who placed them there, and had nothing to do with them or with placing them there. He has never claimed and does not claim any interest in those 6 checks, or in any of them, or in their proceeds, or in any part thereof.

He was also shown the 42 checks last referred to in the testimony of Mr. Gassman, drawn by United Produce Company to the order of "Frank C.

Lofendo." Examining them, he testified that he had never before seen them, that the endorsement of his name which appears on their back by rubber stamp was not placed there by him, that he does not know who stamped his name on the checks nor when any of the checks was deposited at defendant's East Bakersfield Branch and had nothing to do with them or their deposit.

He was further shown the group of checks which have already been marked in this trial as Plaintiff's Exhibit 4 for identification; that is, the checks which were outstanding and unpaid at the time of Mr. Messenger's telephone conversation with Mr. Estribou on November 17, 1948, and which thereafter continued to be unpaid. He refused to answer any questions about them on the constitutional privilege against self-incrimination.

He further testified that he did not buy anything from or sell anything to United Produce Company in either the month of October or November, 1948. He refused to answer on the grounds of self-incrimination whether he had ever theretofore bought anything from or sold anything to United Produce Co.

[Endorsed]: Filed June 26, 1950.

PLAINTIFF'S EXHIBIT No. 27

Western Union
Fast Wire

September 8, 1948, 3:10

Frank Lofendo
c/o Bakersfield Inn
Bakersfield, California

Frank Please Mail Out Some Signed Checks
Tonite Sure. Don't Leave California Until You
Speak to Me. Regards.

LOUIE ROSENTHAL,
United Produce Co.

[Endorsed]: Filed June 26, 1950.

PLAINTIFF'S EXHIBIT No. 31

Mr. Lasky: Will you swear the witness, please,
Mr. Reporter?

Thereupon,

SAM GASSMAN

of lawful age, called as a witness on behalf of the
Plaintiff in the above-entitled cause, having been
first duly sworn, was examined upon oral interroga-
tories and deposed and said as follows:

Direct Examination

By Mr. Lasky:

Q. What is your full name?

A. Sam Gassman.

Q. You are of legal age?

A. I am.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. What is your occupation?

A. Right now, I am a Credit Manager.

Mr. Erskine: What?

The Witness: Credit Manager.

Q. (By Mr. Lasky): What is your address?

A. 6454 North Claremont Avenue.

Q. Chicago? A. Yes, sir.

Q. What was your occupation in the year 1948?

A. I was a bookkeeper. [3*]

Q. For whom?

A. For the United Produce Company.

Q. Of Chicago? A. Chicago, Illinois.

Q. And did you have that position throughout the year? A. Of 1948?

Q. Yes.

A. Yes, I did—I should say, with the exception of the end of November, and all of December of 1948.

Q. Well, at least up to about the 20th of November? A. Just about, yes, sir.

Q. Up to that time, you were with them?

A. I was with the United Produce Company, yes, sir.

Q. And you were employed right here in Chicago? A. Yes, sir, I was.

Q. Was that the head office of the United Produce Company?

A. Was what the head office of the United Produce Company?

Q. Chicago. A. Yes, sir.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. Where was it located?

A. 1421 South Aberdeen Street, Chicago, Illinois.

Q. Were you Office Manager also of United Produce [4] Company? A. No, I was not.

Q. Did you know a man named Frank C. Lofendo? A. Yes, sir, I did.

Q. Were you acquainted with a bank account at the East Bakersfield Branch of the Bank of America, in California, standing in the name of Frank C. Lofendo? A. Yes, I was.

Q. Now, I show you here, Mr. Gassman, three slips of paper, which purport to be deposit slips on the account of United Produce Company with the Merchandise National Bank. A. Yes, sir.

Mr. Lasky: I show them to counsel. I am not interested in the particular items at all. They are just exemplars.

Mr. Erskine: I see.

Q. (By Mr. Lasky): I will show these to you, now, Mr. Gassman, and ask you the question, whether the handwriting of the letters and numerals is your handwriting? A. Yes, sir, it is.

Mr. Lasky: Mr. Reporter, will you mark these papers as Plaintiff's Exhibit No. 1 for identification, as a group?

(The documents referred to were [5] thereupon marked by the Reporter as Plaintiff's Exhibits Nos. 1-A, 1-B and 1-C, for identification.)

Q. (By Mr. Lasky): Did you take care of the

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of **Sam Gassman.**)

deposits in the United Produce Company account at the Merchandise National Bank?

A. In most cases.

Q. And you kept the bookkeeping records of the United Produce Company with respect to them?

A. I would say, at least 95 per cent of the time.

Q. Now, I show you here also, Mr. Gassman, a batch of photostats of deposit slips in the account that stood in the name of Lofendo at the East Bakersfield Branch of the Bank of America.

Mr. Erskine, these are Exhibit 5 on the Estribou deposition. You remember we stipulated they would take the place of the originals for all purposes.

Mr. Erskine: Yes.

Q. (By Mr. Lasky): I will ask you to look at those, beginning on September 20th, and following, and tell me whether or not the numerals which appear there in handwriting are your handwriting?

A. You mean, all of them?

Mr. Sokol: If you are going to testify to all of them, [6] look at all of them.

Mr. Lasky: Yes, I think you might as well do that.

A. In this bunch (indicating) the numerals are in my writing; but in this other bunch (indicating) they are not.

I don't know how you will identify them.

Mr. Lasky: We will take care of that.

Mr. Erskine: Let me see them, please, the ones that are in your handwriting.

Mr. Lasky: I suggest that the Reporter take the

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

bunch the witness said were in his handwriting, and mark them as Plaintiff's Exhibit 2 for identification, as a group.

(The documents referred to were thereupon marked by the Reporter collectively as Plaintiff's Exhibit No. 2 for identification.)

Mr. Lasky: The other group, not in his handwriting, is Plaintiff's Exhibit 3.

(The documents referred to were thereupon marked by the Reporter collectively as Plaintiff's Exhibit No. 3 for identification.)

Mr. Erskine: Let me see those, too, please. [7]

Q. (By Mr. Lasky): Now, Mr. Gassman, showing you those that you say are not in your handwriting, and taking this one here—I will restrict the question to the one here dated November 10, 1948, which is a list of figures totaling \$113,216.50. Do you know whose handwriting that is?

A. No, I don't.

Q. Do you know whose handwriting this is, on the other items?

A. I would have to say this: I would only have to guess at the handwriting, whose handwriting it is, in all of these cases, because I don't know for sure.

Q. Well, will you state to the best of your judgment whose handwriting it is, and state the basis for your judgment, upon which you arrive at that

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

judgment, particularly referring, let us say, to this \$113,216.50 item?

A. Referring to this \$113,216.50 item, the writing on the top, "Frank C. Lofendo, Bakersfield Inn, November 10, 1948," is in my handwriting.

The numerals I believe to be in the handwriting of Frances Sandberg. In my absence, she generally completed the bank deposits.

Q. Well, now, she was an employee of the United Produce Company? [8] A. That is right.

Q. And you had seen her handwriting often, had you?

A. I had seen her handwriting often, yes, sir.

Q. And, basing it upon that familiarity, is it your best judgment that that is her handwriting?

A. Not upon the familiarity with the handwriting, no, sir, as a long period of time has elapsed since I have seen her writing, and I cannot say, for that reason, that this would be her handwriting, only for the aforementioned reason.

Q. I see. Can you say whether or not that deposit slip which you have in your hand, totaling \$113,000 odd, was filled out and prepared in the offices of the United Produce Company in Chicago?

A. It would have to be, because my—well, it would have to be, because my handwriting appears on it.

Q. I see. Well, now, will you look at the others?

I think that this one should be taken out and marked separately by the Reporter as Plaintiff's Exhibit 3-A for identification.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 3-A for identification.) [9]

Q. (By Mr. Lasky): Now, look at the others in the group.

A. These look to me like the handwriting of Frank C. Lofendo.

Q. I see. All right. Now, Mr. Gassman, I show you here—there was another in connection with that group, but it is all in typewriting, so it will have to speak for itself.

I show you another group, part of Exhibit 5 on the Estribou deposition, and I call your attention to the fact that in each case they have the name written out in longhand at the top "Frank C. Lofendo."

Will you look through there, and tell me if that name is in the handwriting of Lofendo?

A. Well, if I have to testify to all of them, I will have to look at all of them.

Q. Yes, I think that would be wise.

A. All right, sir.

(The documents were examined by the witness.)

Mr. Erskine: Would you indicate to me the ones he said are in the handwriting of Lofendo? Did you identify them?

Mr. Lasky: In the last group?

Mr. Erskine: Yes.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Mr. Lasky: 3-B, 3-C and 3-D.

Mr. Erskine: 3-B, 3-C and 3-D? [10]

Mr. Lasky: Yes, sir.

Mr. Erskine: Thank you.

Q. (By Mr. Lasky): Are you prepared to answer?

A. Yes. I would like to qualify my answer on this particular one, only to the extent I believe these are in the handwriting of Mr. Frank C. Lofendo, for the name and address only.

Q. I see.

A. I don't know his figures, but it seems to me the figures are in his handwriting.

Mr. Erskine: Are in his handwriting?

The Witness: Well, they seem to be in his handwriting.

Q. (By Mr. Lasky): The question I was trying to ask you was confined to the name and address at the top.

A. The name and address, as I said, I believe to be in the handwriting of Frank C. Lofendo.

Q. All right.

A. That is, on this bunch here (indicating). On this one (indicating), I don't know; I don't know whether it is or not.

Mr. Lasky: Mark this first bunch as [11] Plaintiff's Exhibit 4 collectively for identification.

(The documents referred to were thereupon marked by the Reporter collectively as Plaintiff's Exhibit No. 4 for identification.)

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Lasky: And the one as to which he says he does not know, as Plaintiff's Exhibit 5 for identification.

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 5 for identification.)

Q. (By Mr. Lasky): Well, now, on this group, marked collectively as Plaintiff's Exhibit No. 4, can you tell me in whose handwriting the figures appear following the words "U. Pro. Co." that appear on many of the checks?

A. In whose handwriting they appear?

Q. Yes.

A. I am not sure. They look like the handwriting of Frank C. Lofendo, but I am not positive.

Q. Now, I show you a couple of deposit slips, both dated November 13, 1948, each document marked "Exhibit 26-I" on the taking of the Estribou deposition.

Can you tell me in whose handwriting they are?

A. This handwriting is my handwriting. [12]

Q. Throughout?

A. Yes, sir, throughout.

Mr. Erskine: May I see that, please?

Mr. Lasky: Off the record.

(There occurred at this point an informal discussion, outside the record, which was not taken down by the Reporter.)

Mr. Lasky: Now, back on the record. We will mark this as Plaintiff's Exhibit 6 for identification.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 6 for identification.)

Mr. Erskine: On 5, he does not know?

Mr. Lasky: 5, he does not know about.

The Witness: On that one, I said I don't know whose handwriting that is.

Mr. Lasky: Yes. Now, I have here the remainder of Exhibit 5, in the Estribou deposition, but to avoid stringing out this deposition, I will defer asking about those until the end, so let us just leave them here for the moment.

Q. Now, Mr. Gassman, beginning at what date, to the best of your recollection, were the deposit slips for the Lofendo account at the East Bakersfield Branch of the [13] Bank of America, prepared in the United Produce Company offices?

A. That would be a difficult question to answer.

Mr. Erskine: How is that?

The Witness: I say, that would be a difficult question to answer, right at the moment, because of the long lapse of time; but, as I recall it, I would judge, probably somewhere between—oh, August and October of 1948.

Q. (By Mr. Lasky): Well, now, if I were to call your attention to what appears to be the fact that on these deposit slips prior to September 16th, none of the handwriting appears to be yours, but on the deposit slips subsequent to September 16th, it appears to be yours, from what you have testified: Would that refresh your recollection?

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. Well, of course, that comes within the scope of the dates I have given.

Q. Yes?

A. It comes within the scope of those dates, and that would probably be as close to right, or as accurate, as could be.

Q. That is, the date of September 16th?

A. Yes, sir.

Q. Would that be, to the best of your recollection, the [14] date?

A. Yes, sir, based upon the evidence that we have here.

Q. Yes. Now, did you maintain at the offices of the United Produce Company in Chicago, blank deposit slips of the Bank of America, for use?

A. Yes, sir.

Q. I show you here a little pad of such deposit slips, surrounded by a rubber band, in which there is a slip of paper with the name written in someone's handwriting, in pencil "Dean Howells, Mazzie Farms, PO Box 876, Arvin, California," and then over on the other side, "Bank of America, East Bakersfield, 1200 Baker Street, Baker, California," and ask you if you have ever seen that before?

A. Yes, sir, I have.

Q. Where have you seen it?

A. Probably at the offices of the United Produce Company.

Q. Do you know whose handwriting that is in?

A. That is in my writing.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. That slip of paper, with those words on it, is in your handwriting?

A. I don't know whether that was around this little group of deposit slips or not, but I can testify that it [15] is in my handwriting, yes, sir.

Mr. Lasky: I see. Then I will ask the Reporter to mark this slip, this little piece of paper with that writing on it, as Plaintiff's Exhibit No. 7 for identification.

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 7 for identification.)

Mr. Erskine: Would you mind letting me see that, please?

Mr. Lasky: Since the witness has testified that he did maintain a pad of blank deposit slips of the Bank of America in his office, I see no point in putting these blanks in evidence, even though I have detached the slip of paper from them.

Mr. Erskine: Well, you can put in one of them, just as a sample.

Mr. Lasky: All right.

Q. I will show you one of these blanks, and ask you if that is not one of the blanks that was kept in your office there?

A. Well, that is a difficult question to answer. **I have seen blanks like this in my office.**

Q. Just like it?

A. Just like it, yes, sir, but whether this is one that [16] was in the office, I don't know.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Lasky: All right. That is good enough. I will ask the Reporter to mark this as Plaintiff's Exhibit No. 8 for identification.

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 8 for identification.)

Q. (By Mr. Lasky): When was it you wrote the material appearing on Plaintiff's Exhibit No. 7 for identification? A. When did I write it?

Q. Yes.

A. I don't remember; I don't have the slightest idea. I could only make a guess, as to when I might have written it.

Q. What is your best judgment?

A. From the point of view of the date, I don't know; but the chances are it would have been at a time when I would have had to have some sort of correspondence with Dean Howells.

Q. Well, then, I will ask you this question: From whom did you obtain the name and address of Dean Howells?

A. As I recall it, it was from Mr. Frank C. Lofendo.

Q. Was he in Chicago at the time? [17]

A. I don't know; I don't know at all.

Q. Well, did you get it from him in person, or over the telephone?

A. I don't know; I can't remember.

Q. But you got it from him in some way?

A. I believe that Mr.—I believe that this infor-

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

mation, for the address, and so forth, came from him. Exactly how I got it, however, or when I got it, I wouldn't know now.

Q. Now, did you make use of these names and addresses, and other information appearing on this slip of paper? A. Did I make use of them?

Q. Yes. A. Yes, sir.

Q. Will you state as to what use you made of them?

A. Deposits that were made in the name of Frank C. Lofendo, were forwarded to Mr. Dean Howells. He in turn would mail the envelope that was enclosed, to the address on the enclosed envelope.

I don't know whether I am making myself clear or not.

Mr. Lasky: I think we can clarify that.

Q. Did you put the deposit slip, together with the item to be deposited, into an envelope? [18]

A. Yes, sir.

Q. I show you here an envelope purporting to be of the Bakersfield Inn. Was it an envelope like that?

A. I don't remember. As I recall it, I believe they had a smaller size envelope.

Q. But did it have the Bakersfield Inn inscription up in the corner? A. Yes, sir.

Mr. Lasky: I will ask that the envelope which the witness now has in his hand, be marked as Plaintiff's Exhibit No. 9 for identification.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

(The envelope referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 9 for identification.)

Q. (By Mr. Lasky): Did you have a supply of those Bakersfield Inn envelopes in the United Produce Company office? A. Yes, sir, we did.

Q. To be used for the purpose of forwarding these deposit slips? A. Yes, sir.

Q. You say, then, if I understand you, that you put into such an envelope, a deposit slip, plus the items to be deposited? [19] A. Yes.

Q. Was that envelope sealed? A. Yes, sir.

Q. And was it addressed to anybody?

A. The Bakersfield Inn envelope?

Q. Yes.

A. Yes, that was addressed to the Bank of America, Bakersfield, California.

I don't recall the exact address.

Q. Was it the address that appears on this slip of paper, Plaintiff's Exhibit No. 7 for identification, over at the right side?

A. I believe in most cases it was, yes, sir.

Mr. Erskine: Let me see that again, please—pardon me. I did not notice that.

Mr. Lasky: Yes, surely.

Q. And then was that envelope, sealed and addressed as you have described, and containing the items you have described, enclosed in another envelope? A. Yes, sir.

Q. And the other envelope was addressed—have

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

you testified—to Mr. Howells? A. Yes, it was.

Mr. Lasky: Now, some of these last questions perhaps [20] have been leading, but I was merely endeavoring to summarize what he has already testified to, and there has been no objection so far.

Mr. Erskine: I do not think that they will be prejudicial. I have no doubt that the witness is stating the facts.

Mr. Lasky: Yes.

Q. Now, was that the procedure that was used by you in the forwarding of such deposit slips and deposits, to the Bank of America, from the time when you began to prepare such deposit slips in the office of the United Produce Company?

A. Of course, I again have to rely upon my memory.

Q. Yes.

A. I would not say that in one hundred per cent of the cases, all of the deposits went directly to Mr. Howells. There may have been exceptions to that rule, when they went directly to the bank; there may have been some exceptions to that rule.

Q. I see. But your best recollection is that most of them went to Mr. Howells? A. Yes.

Q. And some of them went to the bank directly?

A. Well, I would say—as you say, most of them went [21] to Mr. Howells.

Q. I see.

A. And a few probably went directly to the bank.

Q. And did any go to anybody else?

A. As I recall it, the answer would be “No.”

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. All right. Now, what were the items covered by the deposit slips which were sent out in that manner?

A. I don't understand your question.

Q. Well, the deposit slips contained certain items for deposit? A. Yes, sir.

Q. And those items were enclosed with the deposit slip, in the envelope? A. Yes, sir.

Q. What were they? A. Checks.

Q. To whom, and drawn by whom?

A. That, too, would have to be a qualified answer. In most cases the checks were United Produce Company checks, but there were also exceptions to that rule.

At times, included with the deposits, were checks of other parties.

Q. Which were in the control and possession of the United Produce Company? [22]

A. I don't know how to answer that question. You will have to restate it for me.

Q. All right. You say there were checks of other parties? A. Yes.

Q. Where did you get possession of them, in order to put them in the envelope?

A. They came to my desk in the regular course of doing business.

Q. And were they made out to Lofendo, or to others?

A. As I recall it, they had to be made out to Lofendo, in order to be deposited to his account.

Q. Well, now, you will notice, looking at these

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

deposit slips which you have heretofore examined, as for example Exhibit No. 3-A for identification, that the items are listed, prefixed with the wording "U. Pro. Co." A. Yes.

Q. Does that designation appearing upon the deposit slips, tell you whose checks they were?

A. Yes, sir, that does.

Q. Was it the custom at that time to put on all deposit slips, a notation indicating who had drawn the checks?

A. I believe that was the custom of the individual who was making the deposit. I don't know as there was any [23] specified rule as to doing that, however.

Mr. Erskine: Pardon me, but I do not believe I understand that.

Mr. Lasky: I was referring, Mr. Erskine, to this designation here. (Indicating.)

Mr. Erskine: Oh, I see.

Mr. Lasky: Frankly, I think that the slips will speak for themselves, but I think they all contain those notations.

Q. Now, in the case of checks of the United Produce Company made payable to Lofendo, do you know how the endorsement of the name of Lofendo was placed upon the checks?

A. You would have to give me a period.

Q. All right; I shall.

A. (Continuing): So that I will know what period you are talking about.

Q. Beginning on or about the 16th of Septem-

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

ber, at the same time that the deposit slips began to be made out in the United Produce Company office, and at the same time your handwriting began to appear on the United Produce Company deposit slips—or rather, I mean, the Lofendo deposit slips.

A. As I recall that, for the first few days those checks [24] were endorsed by Lofendo in his own handwriting.

Afterwards, a rubber stamp was used to put the endorsement on the back of the check.

Q. Now, who had the custody of the rubber stamp?

A. The custody of the rubber stamp was in my possession.

Q. And who purchased the rubber stamp?

A. The rubber stamp, as I recall it, was billed to the United Produce Company. The exact purchaser, I don't know.

Q. I see. Now, I show you here a rubber stamp, with the name "Frank C. Lofendo" on it. Was that that rubber stamp?

A. This looks like the rubber stamp, yes, sir.

Q. If it is not the same one, it looks just like it?

A. If it isn't the same one, it looks just like it, yes, sir.

Mr. Lasky: Mr. Reporter, will you please mark this stamp as Plaintiff's Exhibit 10 for identification?

(The stamp referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 10 for identification.)

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. (By Mr. Lasky): Was the rubber stamp kept in the offices of the United Produce Company at all times? [25]

A. Did you say, at all times?

Q. Yes.

A. I don't know how to answer that question. I mean, it was in the offices of the United Produce Company whenever use had to be made of it. At other times, I don't know.

Q. Well, whenever you had to make use of it, it was there? A. It was there.

Q. And where it was at other times, when you had no use to make of it, you do not know?

A. That is right.

Q. Now, who put the rubber stamp endorsements on the checks?

A. There was more than one individual who put the rubber stamp endorsement on the checks. Whoever was making the deposit, as a rule, put the rubber stamp endorsement on the checks.

These questions sometimes may seem simple, but they are not always as easy to answer as they seem when the question is asked. I would have to say that more than one individual used the rubber stamp to endorse the back of the checks.

Q. Will you tell me their names? [26]

A. Well, I would have to say that I did it; I would have to say that Frances Sandberg did it; and there were probably cases where Mr. Rosenthal did it.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. I see.

A. (Continuing): They, however, would probably be far and few, where Mr. Rosenthal did it.

Q. Now, was all this done during periods of time when Mr. Lofendo was not in Chicago?

A. When he was not in Chicago?

Q. At least, when he was not in the offices of the United Produce Company.

A. It was done, but whether he was in the office or not, I couldn't say. [27]

* * *

Q. (By Mr. Lasky): Now, Mr. Gassman, when you enclosed a deposit slip in an envelope addressed to the Bank of America, in the inner envelope, was there also a duplicate deposit slip in there?

A. In there? [28]

Q. Yes. A. Yes, sir, there was.

Q. Now, did the duplicate deposit slips, after they had been stamped by the Bank of America in Bakersfield, come back?

A. Yes, sir, they did.

Q. I will show you a group of such slips, and ask you to look at them, and tell me whether or not those are such slips?

A. It will take a little time, again. This batch here (indicating) includes the triplicate that we kept in our office, and also includes the duplicate that was returned to the United Produce Company office after receipt had been made.

Q. I see. So that the United Produce Company

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

kept in its office a copy, when it sent forth the other two? A. Yes, sir.

Q. Now, the group—the ones you referred to as “this batch,” let us have them identified. I will take each group separately, and have it identified.

A. I was just going to say——

Q. Yes?

A. ——that I have looked at them closely, although not with an eagle eye, and there may be some few exceptions, [29] or something like that, but generally speaking, the entire group is that.

Mr. Lasky: I will ask the Reporter to mark that group collectively as Plaintiff's Exhibit No. 11 for identification.

(The documents referred to were thereupon marked collectively by the Reporter as Plaintiff's Exhibit No. 11 for identification.)

Q. (By Mr. Lasky): Now, the other group.

A. This group here (indicating) looks like the triplicate copies that were kept in the United Produce Company office, until the receipted copy came back from the bank.

Mr. Lasky: I will ask the Reporter to mark this group collectively as Plaintiff's Exhibit No. 12 for identification.

(The documents referred to were thereupon marked collectively by the Reporter as Plaintiff's Exhibit No. 12 for identification.)

Q. (By Mr. Lasky): From whom did you get

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

the duplicate deposit slips after they had been stamped with the stamp of the Bank of [30] America?

A. They came directly, as I recall it, from the Bank of America. They were addressed to Frank C. Lofendo, Bakersfield Inn, and then they were forwarded to the United Produce Company, Chicago, Illinois; that is, the Bakersfield Inn forwarded them to the United Produce Company at Chicago, Illinois.

Q. Well, in any event, looking at the envelope, when it arrived at the office of the United Produce Company, the address "Bakersfield Inn" was scratched out——

A. Yes.

Q. ——and the address of United Produce Company was inserted?

A. That is right.

Q. When they arrived at the office of the United Produce Company, did someone open them?

A. They were opened up, in the regular course of opening the mail.

Q. By whoever opened the mail in that office?

A. By whoever opened the mail in the office, yes, sir.

Q. And then the contents were kept in the United Produce Company files?

A. The contents were kept in the United Produce Company files, yes, sir. [31]

Q. Now, do you know how checks on the Lofendo account, the so-called Lofendo account, at the East Bakersfield Branch of the Bank of America, were drawn, and how the matter was handled, beginning

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

about the same time that your name started appearing on these deposit slips?

A. As I recall those transactions——

Q. Well, take it step by step. You do recall how that was handled, do you?

A. Yes, sir, I do recall how it was handled.

Q. Now, I will ask you how it was handled.

Mr. Erskine: Will you let me hear that question again, please, Mr. Reporter?

(The question was thereupon read by the Reporter as above recorded.)

Mr. Riordan: You mean, handwriting, do you not?

Mr. Lasky: Handwriting, yes. I do not mean your name; I mean your handwriting, when your handwriting began to appear on the deposit slips.

A. Now we are talking about the checks which Lofendo issued?

Q. (By Mr. Lasky): Checks drawn on the Lofendo account.

A. Checks drawn on the Lofendo account?

Q. Yes. [32] A. Well——

Mr. Erskine: Pardon me.

The Witness: Yes?

Mr. Erskine: Are you talking about checks drawn on the Lofendo account, or checks drawn by the United Produce Company payable to Lofendo?

Mr. Lasky: No, checks drawn on the Lofendo account.

The Witness: That is why I asked the question;

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

I want to make sure what I am going to testify to.

Mr. Lasky: Yes. We have already covered the other.

The Witness: You are talking about checks drawn on the Lofendo account?

Mr. Lasky: Yes. We have already covered checks drawn by the United Produce Company to the name of Lofendo.

The Witness: All right. At or about the time that we are talking about—or, I think you said, September 16th?

Mr. Lasky: Yes.

Mr. Erskine: What about September 16th?

Mr. Lasky: He said "at or about September 16th."

The Witness: At or about September 16th——

Mr. Lasky: 1948.

The Witness: 1948.

Mr. Lasky: Yes.

The Witness: Mr. Lofendo would sign in our office, [33] after they had been completed for a time, after a lapse of some time,—he signed many checks in blank, and left them in the United Produce Company office.

Q. (By Mr. Lasky): Now, as of what time did he begin signing them in blank?

A. I can't give you a definite date on that; that would be extremely difficult. The thing that made for him to sign those checks in blank was his not being in the office at the time that the checks were needed.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. Well, now, I show you here—

The Witness (Continuing): Not always being in the office, that is, when checks were needed.

Q. (By Mr. Lasky): I show you here a document which I believe comes from the offices of the United Produce Company, and purports to be a copy of a wire, signed Louie Rosenthal, to Frank Lofendo, care Bakersfield Inn, Bakersfield, California, dated September 8, 1948.

Do you wish to see it before I show it to the witness, Mr. Erskine?

Mr. Erskine: Yes. Thank you.

Q. (By Mr. Lasky, continuing): I show you this document, Mr. Gassman, [34] and ask you if that helps to refresh your memory as to the time when Mr. Lofendo began to sign checks in blank?

A. As you refresh my memory now, and as I look at this, I would say, I remember that Mr. Lofendo signed checks in blank while he was still in California.

We asked him to send them—that is, Mr. Rosenthal asked him to send him some, to the United Produce Company office, which he did—or, they came to us with his signature.

Q. Well, then, you do recall, do you, that beginning at least as early as September 8th, blank checks signed by Lofendo in blank arrived through the mails in the offices of the United Produce Company?

A. Yes, I do.

Mr. Sokol: May I see that?

Mr. Lasky: Yes, certainly.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Sokol: Just as a matter of interest.

The Witness (Continuing): I remember that now. Of course, as I say, it is difficult to remember dates, and exactly how these things happened.

Mr. Lasky: Yes, and that is why we have the documents here. Mr. Reporter, will you mark the document just referred to by the witness as Plaintiff's Exhibit No. 13 for identification? [35]

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 13 for identification.)

(There was a brief discussion outside the record.)

Q. (By Mr. Lasky): Is it a fact that through October and November you had—and when I say “you,” I mean, the United Produce Company had in its office, blank checks of the East Bakersfield Branch of the Bank of America, signed in blank by Lofendo? A. Yes, sir.

Q. Now, I will show you——

A. (Continuing): When I use the word “we,” I mean, the United Produce Company.

Q. Yes? A. If I may qualify it that way.

Q. Very good. Now, I will show you here a whole bunch of checks of the East Bakersfield Branch of the Bank of America, in blank, but purporting to have Lofendo's signature.

Are those some of the checks?

A. I would have to answer “Yes,” that these are the same checks that were in the offices of the

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

United Produce Company at the time that I left them. [36]

Q. Well, at the time you left there in November, late in November of 1948, was there a large number of checks just like those? A. There were.

Mr. Lasky: I will ask the Reporter to mark this whole batch of checks collectively as Plaintiff's Exhibit No. 14 for identification.

(The checks referred to were thereupon marked by the Reporter collectively as Plaintiff's Exhibit No. 14 for identification.)

Q. (By Mr. Lasky): Now, was there in the offices of United Produce Company, a check book of blank checks of the East Bakersfield Branch of the Bank of America, like these (indicating) which I now hand you?

A. Yes, sir, there was one like this. Whether this is the same one or not, I don't know.

Q. But at the time you left——

A. At the time I left, there was one.

Q. ——which looked like that?

A. Yes, sir, which looked like that.

Q. And from day to day did you—and when I say “you,” I mean, the United Produce Company, obtain from Frank [37] Lofendo his signature on those blanks?

A. Yes, sir—that was Mr. Rosenthal's job.

Q. Did he do so?

A. Mr. Rosenthal would ask Frank Lofendo to sign those checks.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. Do you know that of your own knowledge?

A. I have heard him, yes, sir; I have heard him ask him.

Q. You have heard Mr. Rosenthal ask Mr. Lofendo? A. Yes, sir.

Q. And have you seen Mr. Lofendo sign the checks? A. Yes, sir, I have.

Q. But otherwise, they were in blank?

A. Yes, sir.

Mr. Lasky: I ask that the book be marked by the Reporter as Plaintiff's Exhibit No. 15 for identification.

(The book referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 15 for identification.)

Q. (By Mr. Lasky): Do you know, and can you tell us, how the blank checks which were signed by Lofendo, but otherwise in blank, were filled out and completed, so as to be completed checks?

You may answer that question yes or no. [38]

A. Yes, sir.

Q. All right. Now, will you tell us how that was done?

A. Instructions were given to anybody who was to fill them in, as to what amounts, and what payee, were to be inserted above the signature; and the person who did the typing was the one who filled in the information.

Q. Now, who was such person?

A. In most cases, it was Miss Frances Sandberg,

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

as she was the typist working—making out the checks.

Q. In the employ of the United Produce Company?

A. In the employ of the United Produce Company, yes, sir.

Q. And in other cases?

A. In other cases, Mr. Lofendo could have made out the checks, in times prior to this September date that we are talking about.

Q. Well, I am confining it from the September date——

A. From the September date on?

Q. Yes.

A. There were exceptions to that rule, where the girl made them out, or I might have typed in some myself, upon instructions from one of the officers of the corporation.

Q. I see. [39]

A. In addition, as I recall the circumstances, Mr. Rosenthal took some checks with him away from the office, signed in blank by Mr. Lofendo, and who completed them, I don't know, as I was not a witness to the completion of the checks.

Q. All right. Now, you say that these checks signed by Lofendo in blank, were filled out with the name of the payee, and the amount, upon someone's instructions?

A. Yes, sir.

Q. Whose instructions?

A. The instructions in most cases were Mr. Rosenthal's.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. Do you know that of your own knowledge?

A. I know that of my own knowledge, yes, sir, because he gave them verbally to me.

Q. I see. Now, in the other cases, when Mr. Rosenthal did not give instructions, who did?

A. That is extremely difficult to remember. There may have been just a rare case where an exceptional check may have been instructed by someone else, but I can't at this time remember if there was anybody else.

Q. Then except for such rare cases, the instructions were Mr. Rosenthal's?

A. Except for the rare cases, the instructions were Mr. Rosenthal's, yes, sir. [40]

Q. Who was Mr. Rosenthal? We have not identified him as yet.

A. Mr. Rosenthal was secretary-treasurer of the United Produce Company.

Q. Now, after those checks had been filled out—and I refer to checks signed in blank by Lofendo—after they were completed, as to payee and amount—was that done on a typewriter? Is that the way they were completed? A. Most of the time.

Q. All right. And after that was done, what was done with those checks?

A. Those checks were at that time either mailed, or brought—or, no. I am sorry. I am getting a little mixed up. It depends upon who the payee was, in a particular case, so I can't give a general answer to that question at all.

You would have to identify the payee.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. All right.

A. So that I can proceed to answer the question.

Q. I will see if I can do that. I show you here a document consisting of numerous pages of penciled notations, on plain white paper.

I show you this, and ask you if you recognize [41] it?

A. Yes, I do.

Q. What is it?

A. It is a day-to-day control, so to speak, of checks drawn on the Lofendo account, and checks deposited to the Lofendo account.

Q. Who prepared it?

A. Who prepared this?

Q. Who made it, who kept it?

A. I kept this.

Q. Whose handwriting is it?

A. Probably, in most cases, mine; I would say, in by far the greatest majority of cases mine.

As I glance through it, it looks like it is all mine, but there may have been an occasional exception or two where it is not my writing.

Q. Well, now, I show you these columns, as you can see.

A. Yes.

Q. There is a line drawn vertically through the page.

A. Yes.

Q. So that there is a lefthand column, and a righthand column.

A. Yes, sir.

Q. The righthand column is entitled "Checks mailed to [42] him"—

A. No; it says "Our checks mailed to him."

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. At the very top are the words "Frank C. Lofendo." A. Yes.

Q. In your handwriting? A. Yes.

Q. And in the lefthand column it says "Our checks mailed to him." A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And is that a list of the checks of United Produce Company, payable to the name of Lofendo?

A. Again, in most cases I would say "Yes," it is. However, there is an occasional check on the lefthand column, which was not a United Produce Company check.

Q. I see. Well, now, take the righthand column. What is that labeled?

A. That is labeled "His checks issued."

Q. And does that list every check that was drawn on the Lofendo account, beginning in March of 1948?

A. You are giving me a date which I don't know, although I see here that there is a 3/30 date.

How much earlier this goes back to, I don't [43] know.

Q. Well, you have here, however, in the right-hand column, some numbers beginning with 301 opposite amounts. A. Yes.

Q. Are those check numbers?

A. Yes, sir, they are.

Q. Now, what was the purpose of that document; what was the purpose of your maintaining that list? A. Maintaining this list?

Q. Yes.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

A. So that the United Produce Company would know how much of a balance there was in the Frank C. Lofendo account, or whether there was a sufficient amount of checks issued and deposited by him, to cover——

Q. Do you mean, issued and deposited by him, or——

A. Issued—whether there was sufficient—let me restate that.

Q. Yes.

A. I mean, whether there was a sufficient amount of checks made payable to Frank C. Lofendo as payee, and deposited by him in the Bank of America, at Bakersfield, California, to cover the checks which were drawn by him against his account in Bakersfield, California.

Q. Now, when you say “drawn by him” do you include in [44] that the checks which were signed in blank by him, and filled out in the United Produce Company office? A. Yes, sir.

Q. Now, did you make any symbol on this list which would indicate which of the checks drawn on the Lofendo account were made payable to the United Produce Company, and which were not?

A. Well, right at the beginning, as this list indicates, I wrote the payee right opposite the amount.

Then later on, as I recall it now, I stopped doing that, and only identified those checks that were not made payable to the United Produce Company. In other words, all checks that were not identified

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

with some symbol, or with some letter, or something, I believe to be made payable to the United Produce Company, unless I made an error at the time that I was doing it.

Q. Unless you indicated otherwise, then, the checks were payable to the United Produce Company? A. Yes, sir.

Q. Did you make this list up from day to day?

A. Well, I kept it running from day to day.

Q. I see. It was a current record?

A. A current record.

Mr. Lasky: I will ask the Reporter to mark the paper [45] just referred to by the witness as Plaintiff's Exhibit 16 for identification.

(The document referred to was thereupon marked by the Reporter as Plaintiff's Exhibit No. 16 for identification.)

Q. (By Mr. Lasky): Now, Mr. Gassman, directing your attention to these checks, as shown on the list which we have just had marked, which were made payable to the United Produce Company, drawn on the Lofendo account: What was done with those after they were completed in the United Produce Company offices?

A. Those checks were then, in turn, turned over to the Merchandise National Bank, in Chicago, in payment of loans which they had made to the United Produce Company.

Q. Now, what about the checks signed in blank by Lofendo, and filled out in the United Produce

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Company offices, to payees other than United Produce Company? What was done with those?

A. Well, those checks were then either distributed, or mailed, or in some way they got to the payees they were intended for.

Q. In connection with business of the United Produce Company? [46]

A. Why, I would rather assume that it was, though I don't know, sir.

Q. Do you know whether or not they were used to pay obligations of the United Produce Company?

A. I don't know that either, sir.

Mr. Lasky: I see. Now, Mr. Erskine, do you have the original checks?

Mr. Erskine: Yes.

Q. (By Mr. Lasky): I show you here six checks which have been marked on the taking of the deposition of a man by the name of Estribou, as Exhibits 13, 14, 15, 16, 17 and 18 for identification, and ask you to look at them, please.

A. Yes, I have.

Q. You have looked at them?

A. Yes, sir.

Q. Now, I call your attention to the fact that they are all made payable to Lofendo, dated November—what is the date, the 10th?

A. The 8th.

Q. (Continuing): —8th, 1948, and if you will look on the reverse side, you will find in rubber stamp, Frank C. Lofendo, as the endorser.

A. Yes, sir. [47]

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. Can you state where that endorsement was placed on them?

A. That endorsement was placed on them in the same office as that where the stamp was.

Q. Of the United Produce Company?

A. Yes, sir.

Q. And do you know who put it on there?

A. That would be difficult to say at this time. As I explained before, whoever was handling it at that particular time, could have put the rubber stamp endorsement on them.

Q. Some employee? A. Yes.

Q. Of the United Produce Company?

A. An employee of the United Produce Company, yes, sir.

Q. Now, after those checks had been so endorsed, will you state how they were transmitted to the Bank of America—well, I believe you stated before, that it was done in the manner you have described. A. Yes, sir.

Q. For all such checks similarly endorsed?

A. Yes, sir.

Q. They were placed in an envelope, addressed to the Bank of America? [48]

A. No, sir, they were placed in an envelope addressed to the Bank of America, and then that envelope placed in another one, addressed to Dean Howells.

Mr. Lasky: Now I am going to return these to you, Mr. Erskine. They are sufficiently identified for our record, are they not?

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Mr. Erskine: I think so.

Mr. Lasky: So that we do not need to put photostats in here.

Q. I show you, Mr. Gassman, a series of checks that were marked the other day, in the taking of the deposition of Mr. Messenger, as Defendant's Exhibits 11-A, 11-C, 11-E, 11-G, 11-I, 11-K, 11-L, 11-M, 11-N, 11-O, 11-P, 11-Q, 11-R, 11-S, 11-U, 11-X, 11-Y, 11-W, and 11-Z, and ask you to look at these, please. (Handing documents to the witness.)

A. Yes, sir.

Q. You have looked at those? A. Yes, sir.

Q. You will notice that these checks are dated November 1st, November 3rd, November 5th, November 6th, November 8th, November 9th, November 10th, November 12th, and I believe that there are some on the 11th, and similar dates—November 13th—1948.

Can you tell me whether or not these were [49] checks which were signed originally in blank by Frank C. Lofendo?

A. I can't definitely tell you that, whether they were previously signed in blank by Frank C. Lofendo or not, based upon what I said before, that we did have a lot of signed checks in the offices of United Produce Company, and I would assume—well, I won't say that.

Mr. Erskine: Well, now, I don't think you should state your assumption.

The Witness: No, I don't want to say that.

Q. (By Mr. Lasky): State your best recollection.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. As I recollect it at the present time, these checks did come from the batch of blank checks that we had in the office of United Produce Company at that time.

Q. Now, during the month of November, 1948, can you state what proportion of the checks that were drawn on the Lofendo account, were filled out on checks that had been signed in blank by Lofendo?

A. By far the greatest majority; it would probably vary anywhere from 90 to 99 per cent.

Q. Can you recall any at all, in the month of November, that were not originally signed in blank by Lofendo, and filled out in the manner you have previously described? [50]

A. I can't recall any, but that wouldn't necessarily mean that there were not any.

Q. I see. All right. Did Mr. Lofendo give anything to the United Produce Company for the United Produce Company checks made out to him and endorsed by means of the rubber stamp?

A. I don't understand your question.

* * *

Q. Well, checks are ordinarily issued in payment of something, I assume. Did Mr. Lofendo make payment of anything to the United Produce Company? A. Did he make payment——

Mr. Sokol: A quid pro quo.

The Witness: No.

Mr. Sokol: A "this" for a "that"? [51]

The Witness: No.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Sokol: If I give you a check, it is generally assumed that you give me something back, or that I owe it to you, or something.

The Witness: I understand.

Mr. Sokol: Off the record, if you please.

(There occurred at this point an informal discussion, outside the record, which was not recorded by the Reporter.)

The Witness: To my knowledge, United Produce Company did not receive anything for the checks which were given to Mr. Lofendo.

Mr. Erskine: Pardon me. You said, "Not to my knowledge." Do you mean by that, so far as you know?

The Witness: Yes, sir, that is what I mean.

Mr. Erskine: All right.

The Witness: So far as I know.

Q. (By Mr. Lasky): You were the bookkeeper, were you not? A. Yes.

Q. Of United Produce Company?

A. Yes, sir.

Q. And you had supervision of the United Produce Company books? [52]

A. Everything except accounts payable.

Q. Except accounts payable? A. Yes.

Q. All right. Now, from your familiarity with the books, do you recall having seen anything, or any record of anything that Lofendo gave for those checks which were made payable to him, and endorsed by means of the rubber stamp?

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. That would be a very difficult question for me to answer. There was a lot of cards, by that I mean, bookkeeping cards, that had Mr. Lofendo's name on them, as shipper; but whether United Produce Company actually got actual cars, I don't know, where they were marked with his name.

Q. When such checks were entered in the books of record of the United Produce Company, those checks made payable to Lofendo and endorsed by means of the rubber stamps, what were they recorded as being for?

Mr. Erskine: Now, I assume that the books themselves would be the best evidence, but I will not press the objection. I have reserved my objection, so never mind. Subject to my reservation, go ahead.

The Witness: Would you restate the question, please.

Mr. Lasky: Read it, please, Mr. Reporter. [53]

(The question was thereupon read by the Reporter as above recorded.)

A. Checks were issued to Lofendo in payment of cars, as indicated, when payment was requested, or in those cases where they were not made in payment of cars, they were supposed to have gone as pre-season advances to Lofendo.

In other words, there were two types—I mean, the checks that were issued were either as an advance, charged to his account, or in payment of

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

cars that he purchased, as far as I was familiar with it.

Q. (By Mr. Lasky): Can you tell us, when the record shows something about cars, whether any such cars were actually shipped?

A. Not being the traffic man——

Mr. Erskine: How?

A. I say, not being the traffic man, I couldn't say for sure that those cars were not shipped; but from my familiarity——

Mr. Erskine: Well, now, just a moment.

Q. (By Mr. Lasky): He has the right to answer, on his familiarity. Let him answer.

A. (Continuing): From my familiarity with what was [54] transpiring in the United Produce Company offices, by far the greatest portion of those checks were not in payment of cars actually shipped.

Q. All right. Now, did United Produce Company give to Mr. Lofendo anything for the checks signed in blank by him, and filled out in the United Produce Company's name there in the offices of the United Produce Company?

A. I am sorry, but I don't understand that question.

Mr. Lasky: I will rephrase it.

Q. You have already testified that there were certain checks signed in blank by Lofendo, and left at the offices of the United Produce Company, and from time to time the payees and the amounts were filled in, and in a great number of them the payee's name was that of the United Produce Company.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. Yes, sir.

Q. Now, in such cases, did the United Produce Company give anything to Lofendo for those checks?

A. Did the United Produce Company give anything to Lofendo for those checks?

Q. Yes.

A. No, sir, except that additional checks were issued by the United Produce Company, to be mailed, or to be sent to the Bank of America, to cover those checks that were [55] issued.

Q. I see. In other words, when a check signed in blank by Lofendo was filled out in some amount, and the name of the United Produce Company put in there, then somewhere about the same time a check of the United Produce Company was made out to Lofendo, stamped with the rubber stamp, and sent out in the manner you have described?

A. That is right. In other words, it was done approximately within one day, at the most.

Q. And you maintained this record, which has been identified as Plaintiff's Exhibit No. 16, to see that the amount of checks going both ways, balanced; is that correct?

A. Well, the general objective was that there would be more money in the Bank of America account—or, in Mr. Frank C. Lofendo's account, than there was drawn against them, so as to maintain a balance there, which the Bank of America requested from Mr. Frank C. Lofendo.

Mr. Erskine: Well, now, just a moment. How

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

do you know that the Bank of America requested that?

Mr. Lasky: I will take care of that. You may cross-examine him in proper order, Mr. Erskine.

Q. (By Mr. Lasky): I will ask you that question myself: In what manner did it come to your knowledge that the Bank of America had requested a balance be maintained in the Frank C. Lofendo account?

A. It came to my knowledge from Mr. Rosenthal, who informed me about trying to keep approximately \$20,000 to \$30,000 balances in Mr. Lofendo's account, as that was requested of Mr. Lofendo by the Bank of America.

Q. And when was it that Mr. Rosenthal told you that?

A. I don't know the exact date, but—— [57]

* * *

Q. (By Mr. Lasky): You were interrupted; proceed, please.

A. (Continuing): ——but after there had been some difficulty between the checks that were—that is, with respect to the balance of the account that Mr. Lofendo was maintaining at the Bank of America, in Bakersfield, as I recall it, there was a trip to California by Mr. Lofendo and Mr. Rosenthal, the exact date of which I don't know at this time.

Q. I see.

A. (Continuing): With reference to the bank account of Mr. Frank C. Lofendo.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Q. Well, now, with respect to the conversation between you and Mr. Rosenthal, with respect to a trip made to California by Mr. Rosenthal and Mr. Lofendo: Was the conversation before or after that trip?

A. The conversation with reference to maintaining the balance?

Q. Yes. A. Is that what you mean? [58]

Q. Yes.

A. I believe that was after the trip.

Q. To the best of your recollection?

A. To the best of my recollection, yes, sir.

Q. About how long after it?

A. Oh, it would be difficult to say.

Q. Approximately.

A. Probably within four, five or six days, anyway, from the time he returned—well, probably immediately upon his return, or shortly thereafter.

Q. Is that to the best of your recollection?

A. Yes, sir.

Q. All right. Now, so that the record will be straight, will you repeat what that conversation was, what Mr. Rosenthal told you at that time?

A. Mr. Rosenthal told me at that time that the Bank of America requested that a balance of somewhere between \$30,000—or around, I should say, \$30,000, or thereabouts, be maintained in the Frank C. Lofendo account; and, in keeping those records, we tried to mail sufficient checks to the Frank C. Lofendo account to keep the balance somewhere between \$20,000 and \$30,000.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. And did Mr. Rosenthal tell you to do that?

A. Yes, he did. [59]

Q. Did you follow those instructions?

A. Yes, I followed those instructions that were given to me by the officer of the company.

Q. In other words, you caused the completed checks, in sufficient amount, to be sent out to Bakersfield for that purpose?

A. That is right.

Q. Now, did you ever give to Mr. Lofendo any record of the checks drawn on his account?

A. Did I ever give any record to him?

Q. Yes.

A. Well, of course, he had the statements originally which came back, and he in turn turned them over to the United Produce Company.

Q. Did you ever give to him any record of the checks signed by Lofendo, and payable to the order of United Produce Company?

A. I don't follow your question.

Q. Well, first I asked you about checks which United Produce Company made payable to the name of Lofendo.

A. Yes.

Q. And now I am asking you about the other, the reverse.

A. Oh.

Q. That is, checks signed by Lofendo on the East Bakersfield [60] Branch account, and payable to the United Produce Company.

A. I understand.

Q. You maintained a record of those checks.

A. Yes, sir.

Q. Did you ever give a record to Lofendo?

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. Of the exact—well, it wasn't the rule, I will say, for him to want to know exactly what was going on with the account after he returned from California.

Prior to that time he was more or less familiar with the status of the account. After he came back from California, however, he was not too familiar with what was transpiring in the account.

Q. Well, now, you did not give him a record of what was going on in the account, did you?

A. Well, I couldn't definitely say that I did not give him a record, no, sir. He may have inquired sometime during the business hours, as to what was going on there, and I might have told him; but from the point of view of telling him exactly, from day to day, or being familiar with every single item that was transpiring through that account—he definitely was not.

Q. You say that he was not familiar—that after he came back from California, he was not familiar with the [81] status of the account. How do you know he was not familiar with the condition of the account?

A. Well, he wouldn't see the checks that were being issued in most cases, after he had signed a check in blank.

Mr. Lasky: Now, Mr. Erskine, I want to bother you again for those six checks.

Mr. Erskine: Yes.

Q. (By Mr. Lasky): We showed you here a

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

while ago six original checks, marked as Exhibits 13 to 18 both inclusive on the Estribou deposition.

Did you ever show those to Lofendo?

A. Did I ever show these to Lofendo?

Q. Yes.

A. The chances are he didn't see them, but I couldn't say that I didn't show them to him or that I did show them to him; I don't know.

Q. Do you have any recollection at all?

A. That would be an extremely difficult matter. With the volume of checks that we handled, to pick any checks out of the air, and ask me if I showed them to him—I wouldn't know.

Q. Well, what proportion of the checks made payable to Lofendo were shown to him?

A. Oh, an insignificant portion, if any. [62]

Q. Now, let me ask you this question: Can you state whether the funds passing into the Lofendo account on the basis of the United Produce checks, were disbursed by checks prepared in the United Produce Company offices? A. Repeat that.

Mr. Lasky: Will you read it, please.

(Thereupon the question was read by the Reporter as above recorded.)

A. As I stated before, by far the greatest majority of the checks that were drawn on the Lofendo account, were issued in the United Produce Company offices; but there were also exceptions to that rule, as stated before.

Q. (By Mr. Lasky): Were those checks drawn

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

on the Lofendo account, used for United Produce Company purposes?

A. Those that were made payable to the United Produce Company, were used for United Produce Company transactions.

Q. Now, how about those which were made payable to Max Felbaum & Co.?

A. Those that were made payable to Max Felbaum & Company were also used for United Produce Company purposes.

Q. How about those made payable to—I think it was Alfinito & Company—or J. Alfinito & Company? [63]

A. Those also were United Produce Company purposes, or transactions.

Q. And Gene Tufo—those made payable to Gene Tufo?

A. I can't definitely say in that case whether they were or not.

Mr. Lasky: I was going to bring some checks so made payable, but unfortunately, I do not have them with me here.

Q. Now, I show you here a batch of documents that were marked on the deposition of Mr. Messenger as Defendant's Exhibits 26, 27, 28, 29, 30 and 31 for identification, each one of which consists of a number of parts, A, B, C, D, E, and so forth, and ask you to look at these. I will give all of them to you.

A. Yes, I have looked at them.

Q. These others down here also (indicating) are

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

part of the group.

A. Then I had better look at all of them.

Mr. Lasky: Yes. Incidentally, Mr. Reporter, I think that this record should disclose among the appearances, that of Mr. Sokol, as attorney for the witness.

Q. You have now looked, Mr. Gassman, at Exhibits 26, 27, 28, 29, 30 and 31? A. Yes. [64]

Q. Are you familiar with those papers?

A. Yes—I have seen them.

Q. Will you state what they are?

A. They are assignments of loans to Merchandise—or, no. I am trying to think of the word to use. These are names of accounts, and the assignments and scheduled listings of the accounts, that were turned over to the Merchandise National Bank, upon which the Merchandise National Bank based their loans to the United Produce Company.

Q. Now, did you physically take those papers down from time to time to the Merchandise National Bank? A. Yes, sir, I did.

Q. And at the time you took those down to the Merchandise National Bank, and delivered them to that bank, were they all filled out, or was there nothing on there but the rubber stamp over the signature of Mr. Rosenthal?

A. No, they were completely filled out on the typewriter of the United Produce Company.

Q. Now, as an illustration, I will take Defendant's Exhibits 30-A and 30-B. You will notice that 30-B shows a rubber stamp. A. Yes, sir.

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Q. And a legend. [65] A. Yes.

Q. "United Produce Company, by"—the signature; is that correct? A. Yes.

Q. Rosenthal's signature?

A. Yes, Rosenthal's signature.

Q. And everything appearing above that signature in typewriting: Was that in there, when delivered to the bank? A. Yes, sir.

Q. And is that also true of all the other exhibits that have just been referred to? A. Yes, sir.

Mr. Lasky: Now, since these have been identified in the deposition of Mr. Messenger, I take it we do not have to make copies for this deposition.

Mr. Erskine: Oh, no.

Q. (By Mr. Lasky): Now I show you here a batch of checks of the United Produce Company, bearing the name of Frank C. Lofendo, and bearing the dates of November 13th, 16th, 17th, and I believe there are some on the 19th here, which appear never to have been cancelled.

Does counsel want to see them? [66]

Mr. Erskine: Yes.

Mr. Lasky: I show them to you.

A. Yes, sir, I have seen them.

Q. (By Mr. Lasky): Tell me what those are.

A. These are checks of the United Produce Company, made payable to Frank C. Lofendo, and endorsed with the rubber stamp previously mentioned, on the back of the check.

Q. When were they prepared?

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

A. When were they prepared?

Q. Yes.

A. That is a difficult question to answer. The date, as it appears on the check, may not be the date of preparation.

Q. Will you explain how that came about?

A. Well, I will have to think about that for just a moment, if I may.

Q. Yes.

A. As a rule, most of the checks were dated on the day they were prepared, but that does not necessarily mean, however, that it would be that date, for the reason that if there were a lot of checks going to the bank on that particular day, in order to make it appear as if not all [67] of those checks were issued on the same date to him, the dates would be changed.

Q. Did you prepare checks of United Produce Company payable to the name of Frank C. Lofendo, and have them ready for use whenever you wanted to get a proper balance in the Lofendo account?

A. Well, the procedure was one of—it was a matter of expediency. In other words, the United Produce Company generally had some idea as to what deposit they would have to make during the day, in order to cover checks that would clear during that day on the United Produce Company account, and those checks were prepared at the first moment of spare time during the day, during the course of the day's business.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

In other words, they were not prepared at any special time; they were prepared as the occasion arose, or as we had the time to do them, and then whether an additional check had to be added or one held back, or something like that, was a matter of judgment, and things of that sort, for the individuals involved, during the day.

Q. Well, then, by means of your record, Plaintiff's Exhibit No. 16 for identification, did you determine when it was desirable to send out to the East Bakersfield [68] Branch of the Bank of America, the checks payable to Frank C. Lofendo?

A. Yes, sir.

Q. Now, those particular checks that you have in your hand there, Mr. Gassman, were never used?

A. Well, from appearances, it would seem that they were not used.

Q. Can you explain how it happened that those were not used?

A. I don't really know; I don't even know where they were, or where they came from, except the fact that they were issued to him.

The only thing that I can say is that they were probably mailed to him, as other checks were, and noting the dates on them, although as I say those dates may not be exactly correct, though they would not be off by probably more than one or two days—noting that they came close to the time when the United Produce Company ceased operating, what

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

probably happened was that they never got into the bank.

Q. Well, I will ask you this question, Mr. Gassman: At the time you left United Produce Company, late in November, I think you have already testified that there was a group of signed blank checks, signed in blank by Lofendo. [69]

Was there also, do you recall, a group of checks of United Produce Company, made out to Lofendo, and stamped with the rubber stamp endorsement, but not yet sent out to Bakersfield?

A. There were no such checks.

Q. You do not recall any such?

A. No, sir, I don't recall any such. Those checks were prepared as they were needed to cover deposits.

Mr. Lasky: I will ask the Reporter to mark this group of checks as Plaintiff's Exhibits 17-A to 17-S both inclusive for identification.

(The documents referred to were thereupon marked by the Reporter as **Plaintiff's Exhibits** 17-A to 17-S, both inclusive for identification.) [70]

* * *

Mr. Lasky: I will reframe the question.

Q. Was the account in the name of Frank C. Lofendo, at the East Bakersfield Branch of the Bank of America in California, just another pocket of the United Produce Company, out of which it operated?

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Erskine: Well, now, that is objectionable also.

Mr. Lasky: What is the objection?

Mr. Erskine: As leading and suggestive.

Mr. Lasky: All right. I will reframe it again.

Mr. Erskine: I do not want to put any obstacle in your path. Let me see just a moment. Has he not already testified that that account was used for the purposes of the United Produce Company?

Mr. Lasky: Well, that is my construction of what he has testified to. If that is your construction of what [71] he has testified to, I will not pursue it.

Mr. Erskine: I am not stipulating to anything. I am just trying to find out. I do not like this use of terms like "another pocket," and so forth. I do not know what that means.

Mr. Lasky: Well, let me reframe it again, Mr. Erskine.

Mr. Erskine: I do not want to be captious, particularly at the hour of 7:45 p.m.

Mr. Lasky: I will reframe it again, and maybe this time I can bypass your scrutiny.

Q. Was the account maintained in the name of Frank C. Lofendo, at the East Bakersfield Branch of the Bank of America, another account of the United Produce Company?

A. I will answer your question in this way: I will say that it was instrumental in carrying on the business of United Produce Company, and that United Produce Company did utilize the account of

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Frank C. Lofendo, to carry on its day-by-day business.

Q. And what was the purpose of the utilization of that account; for what purpose was it utilized?

Mr. Sokol: If he knows.

A. I don't know how to answer that question.

Mr. Lasky: If you know.

Mr. Sokol: I just want to interject this—and it [72] may be a part of the record, or not—that circumstances have made it such that he has learned a great deal more about the machinations of the United Produce Company since he has left their employ, from me.

Mr. Lasky: All right.

Mr. Sokol: Because I have had certain conversations with certain individuals, and in turn, in discussing the case with him, there have been developed certain things which were behind certain things at the time he did them, at someone else's instructions, that, when they were done, were not apparent, that he did not know at the time, but learned subsequent to that time, because of certain things he has been told about it.

Mr. Lasky: I will withdraw the question.

Q. Do you know who Dean Howells was, or is?

A. Do I know who he is?

Q. Yes.

A. I only know who he is from what I have been—from what I have heard.

Q. Well, from whom have you heard that?

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

A. From Frank Lofendo, and from Mr. Rosenthal, but it was in general conversation, not specifically discussing Dean Howells, but having heard that there was a Dean Howells. However, I have never seen him, and I would not [73] know what he looked like, in a million years.

I have just heard his name.

Q. All right. I want you to tell me what you have been told relative to Dean Howells by Frank C. Lofendo. I am not going to ask you what you have been told by Mr. Rosenthal.

A. Well, I wouldn't say that I was told definitely from Frank Lofendo, that it was told to me directly.

Q. Well, all right, but did you hear it from him?

A. I heard it in the office, as part of conversation that he may have been having with individuals in the office.

Q. But whether he was speaking to you, or to someone else, you heard it from him?

A. Yes, sir.

Q. And what was it he said?

A. All that he said, as far as Dean Howells was concerned, was that Dean Howells was an employee of Mazzie Farms, and anything else about him I don't know.

Mr. Lasky: All right. Well, subject to any suggestion that my associate, Mr. Riordan, may make, I am through. May we consult for a moment?

(A short intermission occurred.)

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Mr. Lasky: The direct examination is concluded. I [74] will, however, ask the Reporter to mark the balance of Exhibit 5, which I previously referred to, as Plaintiff's Exhibit 18 for identification.

(The documents referred to were thereupon marked by the Reporter as Plaintiff's Exhibits 18A to 18-BB for identification.)

Mr. Erskine: Off the record.

(There occurred at this point an informal discussion, outside the record, which was not recorded by the Reporter.)

(And Thereupon, the further taking of said deposition was adjourned until Thursday, December 8, A.D. 1949, at the hour of 5:30 o'clock p.m., at the same place.) [75]

Direct Examination
(Continued)

By Mr. Lasky:

Q. Mr. Gassman, I am going to show you a little sheaf of papers, marked on the deposition of Mr. Messenger as Defendant's Exhibits 40-A, 40-B, 40-C, and so forth, and I merely want to ask you to look at those, and tell me whether or not those papers are in your handwriting.

(The witness examined the documents referred to.)

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Lasky: I might say, Mr. Erskine, I had them here the other night, and forgot to refer to them.

A. Yes, they are, with the exception of—

Q. By Mr. Lasky): With the exception of what? A. This one here. (Indicating.)

Q. With the exception of Messenger Exhibit 40-B, the others in the same Exhibit 40 group are in your handwriting; is that correct?

A. That is right.

Mr. Sokol: Please speak up, Mr. Gassman, so that the Reporter can hear you.

The Witness: Yes—they are. [77]

Q. (By Mr. Lasky): Now, Mr. Gassman, last Tuesday evening you testified to sending out checks and deposit slips to Bakersfield, California, enclosed in an envelope of the Bakersfield Inn, addressed to the Bank of America, in turn enclosed in another envelope, addressed to Mr. Dean Howell.

Did you enclose in the outer envelope a slip of paper, with notations on it indicating the date when the inner envelope was to be sent to the Bank of America for deposit?

A. I would like to make one correction in what I said.

Q. Yes.

A. With reference to mailing the first envelopes, I might have incidentally mailed some of them, but of course, that was generally not my task. That was a part of the task of anybody who was taking care

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

of the mail, so that there would have been another individual who would have actually done the mailing, probably, in 95 to 97 per cent of the cases; and, as an exception, I, as an individual, may have mailed them.

From the point of view of putting a note on, I would say that there were some cases in the beginning where a note was put on, upon instruction from an officer.

Q. Of the United Produce Company?

A. Of the United Produce Company, yes, sir. Later on there was no necessity for it, because they had to go to the bank as soon as they arrived in California.

Q. But in the earlier cases, you did include a note in the outer envelope, with notations as to when the inner envelope was to be sent on to the Bank of America for deposit?

A. Yes sir—that is, I would not say all the time, but there were definitely instances of that sort.

Q. Now, Mr. Gassman, I show you here a group of 42 checks of the United Produce Company, each payable to Frank C. Lofendo, and each having on the back the rubber stamp endorsement "Frank C. Lofendo," and all of them appearing to have cleared through the bank, drawn on the Merchandise National Bank.

Does counsel want to see these?

Mr. Erskine: I might just glance at them, yes. Thank you.

Plaintiff's Exhibit No. 31—(Continued)
(Deposition of Sam Gassman.)

Mr. Lasky: The aggregate amount of these checks being \$763,340.32, I believe.

Mr. Erskine: All right. [79]

Q. (By Mr. Lasky, continuing): Now will you look at these checks, please, Mr. Gassman.

(The witness examined the documents referred to.)

A. Yes, sir, I have looked at them.

Q. Now, in the case of all these checks, bearing the rubber stamp endorsement of Frank C. Lofendo, were those checks prepared, and the rubber stamp placed on the checks, in the manner in which you described with respect to similar checks?

A. Yes, sir.

Q. Now, I call your attention to one check in the group for \$33.62, which has the endorsement "Frank C. Lofendo" on it in writing.

A. I see that.

Q. In handwriting. Do you recall that check?

A. No, sir, I do not; it would make no impression upon me at all.

Q. I see. Can you recognize that as Mr. Lofendo's handwriting? A. Yes, sir, I do.

Q. But in the case of the other checks in the group, the endorsement was put on by the rubber stamp, by someone in the employ of United Produce Company? A. Yes, sir. [80]

Q. And the checks were then forwarded to

Plaintiff's Exhibit No. 31—(Continued)

(Deposition of Sam Gassman.)

Bakersfield, California, in the manner which you have already described? A. Yes, sir.

Mr. Lasky: I have no further questions. I think that these checks should be marked as Plaintiff's Exhibits 19-A, and so forth; and then, Mr. Erskine, I think we would like to withdraw them, and substitute photostatic copies.

Mr. Erskine: All right.

Mr. Lasky: Because there may be occasion to use them elsewhere.

(The checks referred to were thereupon marked by the Reporter as Plaintiff's Exhibits 19-A to 19-PP, both inclusive, for identification.)

* * *

[Endorsed]: Filed June 26, 1950.



PLANNING EXHIBIT No. 32
5-0

No 8434

WE ENCLOSE FOR COLLECTION
ITEM LISTED BELOW

Date	Owners Date & Number	Payer & Documents	Date of Item	Due	Amount
					\$ Int. Total

Special Instructions

NO PROTEST

Deliver documents only on payment unless otherwise instructed.

If unpaid at maturity please return at once.

Kindly remit in Chicago or New York Exchange.

Return this letter with your remittance.

MERCHANDISE NATIONAL BANK

MERCHANDISE MART

CHICAGO, ILL.

1258

1, [Endorsed]: Filed June 26, 1950, 112.

T O



The Friends Account at Bank of America N. Y. & C. A. - East 13th Street
 This showing days on which payments were made against uncollected funds
 on the 1st day on which account had a clear collected balance

Date	<u>Per books</u>		<u>Adjusted for Pre-Paid</u>		125
	Collected Balances	Amount Paid against Uncollected Funds	Collected Balances	Amount Paid against Uncollected Funds	
9-25		115 168 63		115 168 63	
9-27		115 175 -		50 168 63	
9-28	28686 97	84 488 03	28686 97		
9-29		52 249 03	52 286 97		
9-30		52 249 03		52 249 03	
10-1		66 702 03	21 166 97		
10-2		142 609 03		66 702 03	
10-4		186 298 53		60 284 03	
10-5		115 798 53		115 798 53	
10-6		160 798 53		115 798 53	
10-7		48 298 53		13 298 53	
10-8		53 203 73	35 451 47		
10-9		141 885 23	18 676 27		
10-11		141 885 23		141 885 23	
10-13		115 212 73	37 228 -		
10-14		119 921 73		49 180 73	
10-15		200 444 73		119 921 73	
10-16		118 092 23		118 092 23	
10-18		89 922 73		44 922 73	
10-19		170 893 03	69 815 77		
10-21	49 373 37		75 799 77		
10-22		50 118 50	49 373 37		
10-23		91 856 50		50 108 50	
10-25		154 515 50		26 019 50	
10-26		286 531 10		154 515 50	
10-27		316 592 90		286 531 10	
10-28		56 223 23		37 139 83	
10-29		59 353 73		16 842 23	
10-30		286 641 73		16 141 73	
11-1		17 332 73	11 912 77		
11-3		133 739 97	111 934 79		
11-4		133 739 97		133 739 97	
11-5	10 856 63		77 683 13		
11-6		44 058 69	10 856 63		
11-8		10 672 19	16 964 31		
11-10	13 061 17		239 120 17		
11-15		96 507 98	13 061 17		
11-17		82 281 74		6 624 83	

[Endorsed]: Filed June 26, 1950.

PLAINTIFF'S EXHIBIT NO. 34

Form 1242
TREASURY DEPARTMENT
COMPTROLLER OF THE CURRENCY—EXAMINING

THIS REPORT OF EXAMINATION IS STRICTLY CONFIDENTIAL

State whether special or regular examination

REGULAR

This report of examination has been made by an examiner selected or approved by the Comptroller of the Currency for use in the supervision of the bank. This copy of the report is the property of the Comptroller of the Currency and is furnished to the bank examined for its confidential use. Under no circumstances shall the bank, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof. The information contained in this report is based upon the books and records of the bank, upon statements made to the Examiner by directors, officers, and employees, and upon information obtained from other sources believed to be reliable and presumed by the Examiner to be correct. It is desired that each director, in keeping with his responsibilities both to depositors and to stockholders, thoroughly review the report. In making this review, it should be kept in mind that an examination is not the same as an audit, and this report should not be considered to be an audit report.

Name of Examiner **J. F. MARR** No. of Bank **14390** Fed. Res. Dist. No. **7**

EXAMINER'S REPORT OF THE CONDITION OF

The **MERCHANTS NATIONAL BANK OF CHICAGO** **CHICAGO** **COOK** **ILLINOIS**
(City) (County) (State)

Examination commenced at **8:15** o'clock **A. M.**, on **DECEMBER 30, 1948**

Examination closed at **3:00** o'clock **P. M.**, on **JANUARY 12, 1949 (4 days intervening)**

RAYMOND L. HENNINGER, President. **WILLIAM J. HENNINGER**, Vice President & Cashier.

Resources	Amount	Liabilities	Amount

LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5300 OF THE REVISED STATUTES, EXCESSIVE BALANCES WITH
NON-MEMBER BANKS UNDER SECTION 19, FEDERAL RESERVE ACT, AND LOANS TO AFFILIATES IN EXCESS SECTION
23A, FEDERAL RESERVE ACT, AS AMENDED.

(Charged-off items, overdrafts, and bank's own acceptances discounted must be included in loans.
Also include cash items and enforceable repurchase agreements.)

Name of Borrower	Amount	If loans excessive by reason of reduction in capital or surplus or for any other reason not in violation of law, so state. Otherwise give names of directors who approved these loans as shown by the bank's records, and any other comment deemed appropriate.
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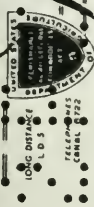
Not so determined.

Endorsed : Filed June 26, 1950.

If excessive loans are numerous, continue the list on Form 1430, to be inserted in the report at this point.
Where an excessive loan exists because of accommodation paper, partnership liability, renewed commercial paper, or any unusual reason, state clearly why this line is so classed.

NOTE: The examiner should advise the directors of their individual responsibility, under Section 5319, U. S. R. S., for all loss sustained on excessive or other unlawful loans.

Produce Company



CARLOT FROMA • VEGETABLES • POTATOES • ONIONS

1421 SOUTH ANGLE

PAY UNITED PRODUCE CO. **18426 DOLS 00 CTS** \$ 18426.00

TO THE ORDER OF

FRANK C. LOFENDO
BAKERSFIELD CALIFORNIA
CASE No. 28721-12 PLAINIFF'S EXHIBIT No. 13 for id
IN THE MATTER OF *Overhauser v. B. & A.*
DATE *9/29/49* WITNESS *Overhauser*

UNITED PRODUCE COMPANY

MERCHANDISE NATIONAL BANK
OF CHICAGO
CHICAGO, ILLINOIS

RECEIVERS GROWERS SHIPPERS 116

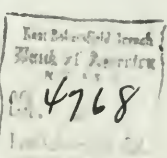
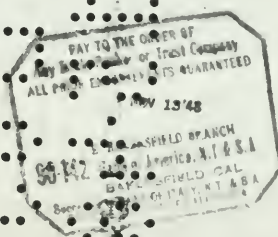
By *[Signature]* President

CANCELLED IN ERROR

[Signature]
MERCANDISE NATIONAL BANK - CONTROLLER

THIS CHECK IS HEREBY ACCEPTED IN FULL PAYMENT AND SETTLEMENT OF ANY AND ALL CLAIMS REPRESENTED BY OR ARISING FROM THE SUBJECT MATTER APPEARING ON THE STATEMENT OF SETTLEMENT ATTACHED.

FRANK C. LOFENDO



Plf's 13 id

91000

United Produce Company
100 DISTANCE
D. I.
TELEPHONES
CANAL 9722



CARLOT FRUITS • VEGETABLES • POTATOES • ONIONS

1421 SOUTH ALBANY CHICAGO, 9, ILL.

NOVEMBER 8, 1948

\$ 15665.00

PAY TO THE ORDER OF
UNITED PRODUCE CO
\$ 15665 DOLS 00 CT

CASE No. 287258 PLAINIFF'S EXHIBIT No. 14 for it
IN THE MATTER OF Merchandise
Bakersfield California DATE 9/29/49 WITNESS *Contra* *Pro*

FRANK C. LOFENDO
BAKERSFIELD CALIFORNIA

UNITED PRODUCE COMPANY
By *Frank C. Lofendo*
President

MERCHANDISE NATIONAL BANK
OF CHICAGO
CHICAGO, ILLINOIS

RECEIVERS

GROWERS

SHIPPERS

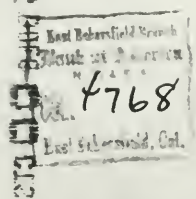
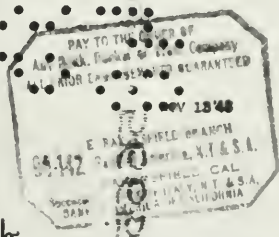
118

CANCELLED IN ERROR

Dee
MERCHANDISE NATIONAL BANK - COMPTROLLER

THIS CHECK IS HEREBY ACCEPTED IN FULL PAYMENT AND SETTLEMENT OF ANY AND ALL CLAIMS REPRESENTED BY OR ARISING FROM THE SUBJECT MATTER APPEARING ON THE STATEMENT OF SETTLEMENT ATTACHED.

FRANK C. LOFENDO



Ref's 14 id

Produce Company



LONG BRANCH
L 03
CHICAGO, ILL.
CHICAGO, ILL.
CHICAGO, ILL.

FRUITS • VEGETABLES • POTATOES • ONIONS

CHICAGO, ILL. November 8, 1948

PAY TO THE ORDER OF UNITED PRODUCE COMPANY \$ 17976.00

17976 DOLS 00 CT

FRANK C. LOFTENDO
BAKERSFIELD CALIFORNIA

RECEIVERS
CHICAGO, ILLINOIS

RECEIVERS

GROWERS

SHIPPERS

President

CASE No. 2-8721-15-18 EXHIBIT No. 15-18-15
IN THE MATTER OF Merchants' Bank of Chicago
WITNESS: 9/29/49

UNITED PRODUCE COMPANY

By: [Signature]

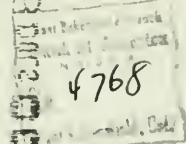
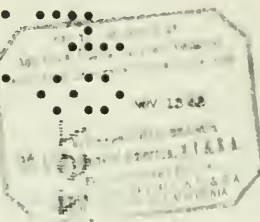
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Boysen
MERCHANDISE NATIONAL BANK - COMPTROLLER

THIS CHECK IS HEREBY ACCEPTED IN FULL PAYMENT AND SETTLEMENT OF ANY AND ALL CLAIMS REPRESENTED BY OR ARISING FROM THE SUBJECT MATTER APPEARING ON THE STATEMENT OF SETTLEMENT ATTACHED.

FRANK C. LOFTENDO

30 00



Ref'd 15 id

UNITED STATES DEPARTMENT OF AGRICULTURE
LONG DISTANCE
L.O. 5-5
TELEPHONE
CANAL 8722

Produce Company
CARLOT FRUITS • VEGETABLES • POTATOES • ONIONS
1421 SOUTH WABASH ST. • CHICAGO, 8, ILL.

November 8, 1948

\$ 22692.50

UNITED PRODUCE CO. **2692 DOLS 50 CT**

PAY

FRANK C. LOEFFENDO
BAKERSFIELD CALIFORNIA.

PLAINTIFF'S EXHIBIT No. 16
DEFENDANT'S *Exhibit*
CASE NO. 28721-R
IN THE MATTER OF *Overton v. Carmon*
WITNESS *Carmon*

UNITED PRODUCE COMPANY
Carmon

RECEIVERS

CHICAGO, ILLINOIS

DATE

9/28/49

GROWERS

By

SHIPPERS

President

CANCELLED IN ERROR

Frank C. Loeffendo
MERCHANDISE NATIONAL BANK - CONTROLLER

THIS CHECK IS HEREBY ACCEPTED IN FULL PAYMENT AND SETTLEMENT OF ANY AND ALL CLAIMS REPRESENTED BY OR ARISING FROM THE SUBJECT MATTER APPEARING ON THE STATEMENT OF SETTLEMENT ATTACHED.

FRANK C. LOEFFENDO

ALL PAYEE'S TO SIGN
ALL PAYEE'S TO SIGN
NOV 18 48
BANKERSFIELD CAL
BANKERSFIELD CAL
BANKERSFIELD CAL

Bankersfield Branch
Bank of America
N.A.S.
4768
Bankersfield, Cal.

Peb's 16 id

Feb 21 1722

THIS CHECK IS HEREBY ACCEPTED IN FULL
PAYMENT AND SETTLEMENT OF ANY AND ALL
CLAIMS REPRESENTED BY OR ARISING FROM
THE SUBJECT MATTER APPEARING ON THE
STATEMENT OF SETTLEMENTS ATTACHED.

Ref 1818

TO

64014

MERCHANDISE NATIONAL BANK
CHICAGO, ILLINOIS.

DATE NOVEMBER 13, 1940
SENT

DD	NO.	UD
In reporting our collection number, please include letter prefix.		

E. BAKERSFIELD. Branch

Item as described below is enclosed herewith for collection. PLEASE MAKE SEPARATE REMITTANCE OR CREDIT FOR THIS COLLECTION AS INDICATED BELOW. MENTION THIS COLLECTION NUMBER AND NAME OF THIS BRANCH.

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION
BAKERSFIELD CALIF

PAID
NOV 15 1940
OF CHICAGO ILL
MERCHANTS NATIONAL BANK

SPECIAL INSTRUCTIONS

CASE No 28721-12 EXHIBIT No. 20 - *Barra*
IN THE MATTER OF *Overseas American Co. - B. of A.*
DATE *9/29/49* - WITNESS *Overseas*

INSTRUCTIONS

Must be paid not later than _____
Allow discount as follows: *NONE*
Deliver documents only on *PAYMENT*.
Advise non-payment by *MAIL*.

ENDORSER

FRANK C. LOFENDO
BAKERSFIELD INN
BAKERSFIELD, CALIF.

DRAWEE:

UNITED PRODUCE CO.

DOCUMENTS

6 drafts.

AMOUNT

\$18,426.00
15,665.00
17,976.00
22,692.00
18,426.00

DISPOSITION OF PROCEEDS

Please dispose of proceeds as indicated by letter *K* below.
"K" Credit Bank of America National Trust and Savings Association with advice to this branch.

"L" Remit in _____ funds

To _____ for credit of Bank of America National Trust and Savings Association with advice to this branch.

"M" Remit in _____ funds to this branch.
"N" Credit "Branch Clearings" and send entry letter to this branch.

Please acknowledge receipt of this collection

to this branch of the

113,216.50

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION

[Endorsed]: Filed June 19, 1950.

Date	Owners	Documents	Date of Item	Due	Amount
11-12-48	A O W V T N I O E C E	Check- signed by United Produce Co. payable to Frank W. -ofendo 419-4765	11-6-48	Demand	\$ 22,367.50
		Bank of America NT and SA Bakersfield, California	Special Instructions NO PROTEST PLEASE ADVISE BY AIR MAIL NOV 10 1948 MERCHANTISE NATIONAL BANK OF CHICAGO		Total
					Coll. Fee
					Total

☐ We enclose our check in payment.
☒ We credit your account with total shown above.
☐ We return the above described item unpaid.
 Reason _____

MERCHANTISE NATIONAL BANK
 CHICAGO, ILLINOIS

MERCHANTISE NATIONAL BANK
 CHICAGO, ILLINOIS

Nº 69579

Date	Owners	Documents	Date of Item	Due	Amount
11-12-48	A O W V T N I O E C E	Check- signed by United Produce Co. payable to Frank W. -ofendo 419-4765	11-6-48	Demand	\$ 19,053.60
		Bank of America NT and SA Bakersfield, California	Special Instructions NO PROTEST PLEASE ADVISE BY AIR MAIL NOV 10 1948 MERCHANTISE NATIONAL BANK OF CHICAGO		Total
					Coll. Fee
					Total

☐ We enclose our check in payment.
☒ We credit your account with total shown above.
☐ We return the above described item unpaid.
 Reason _____

MERCHANTISE NATIONAL BANK
 CHICAGO, ILLINOIS

1258

Date	Owners	Documents	Date of Item	Due	Amount
11-12-48	ADVTN CO O W T N E R	Check - signed by United Produce Co, payable to Frank G. Lofendo 419-4763 BANK OF AMERICA NT AND SA BAKERSFIELD, CALIFORNIA	11-6-48 Demand		\$ 28,037.50 Total
Special Instructions PAID REMITTANCE BY AIR MAIL NOV 12 1948 MERCHANDISE NATIONAL BANK OF CHICAGO					Coll. Fee Total

☒ We enclose our check in payment.
☐ We credit your account with total shown above.
☐ We return the above described item unpaid.
 Reason

MERCHANDISE NATIONAL BANK
 CHICAGO, ILLINOIS

No: 69578

MERCHANDISE NATIONAL BANK
 CHICAGO, ILLINOIS

Date	Owners	Documents	Date of Item	Due	Amount
11-12-48	ADVTN CO O W T N E R	Check - signed by United Produce Co, payable to Frank G. Lofendo 419-4763 BANK OF AMERICA NT and SA BAKERSFIELD, CALIFORNIA	11-6-48 Demand		\$ 19,854.50 Total
Special Instructions PAID REMITTANCE BY AIR MAIL NOV 12 1948 MERCHANDISE NATIONAL BANK OF CHICAGO					Coll. Fee Total

☒ We enclose our check in payment.
☐ We credit your account with total shown above.
☐ We return the above described item unpaid.
 Reason

MERCHANDISE NATIONAL BANK
 CHICAGO, ILLINOIS

DEFENDANT'S EXHIBIT O

Western Union

[Telegram]

OA122

O.CB113 56 2 Extra Collect—WV Chicago, Ill., 20 1023A—I. N. Tarr, Assistant Cashier, Bank of America—432x108—East Bakersfield Branch, Bakersfield, Calif—

Answering Wire Re: United Produce We Loan Them Legal Limit on Secured Basis. Net Worth of Company Over Eighty Thousand Dollars. Impossible for Us to Set Limit on Acceptance of Their Checks Up to Present Have Never Returned Any Checks. Suggest You Contact Your Main Branch at Fresno, California, Who Have Complete Information.

MERCHANDISE NAT'L BANK
OF CHICAGO,

J. H. REICHWEIN,
Vice-President.

[Endorsed]: Filed June 20, 1950.

DEFENDANT'S EXHIBIT Q

Merchandise National Bank
of Chicago
Merchandise Mart
Chicago 54

September 22, 1948.

Bank of America,
Fresno Main,
Fresno, California.

Gentlemen:

In reply to your telegram of September 21, we wired you as follows:

“Refer wire date. Checks in amount mentioned good at this time. U. P. Company well and favorably known to us. Extend loans in six figures under special arrangements. Writing.”

We are pleased to advise that we have had a very satisfactory account from United Produce Company, 1421 South Aberdeen Street, this city, since September, 1945, it being their practice to maintain balances averaging in satisfactory five-figure proportions. We hold at their disposal a line of credit to the extent of our legal loaning limit of \$200,000, under special arrangements, and find that they make proper use of this commitment. In addition to the foregoing line, we also discount customers' drafts for them to the extent of \$250,000 and our experience in connection with same has been favorable. The latest financial figures we have seen from the company is for their fiscal year ended

June 30, 1948, at which time they reported a net worth in the amount of \$82,000 in addition to \$25,000 which was advanced to the company by the principals. The company is making progress from the standpoint of operations.

In our dealings with them we have come to entertain a favorable regard for the account in this quarter, which is best evidenced by the support we extend.

Very truly yours,

/s/ F. W. RUDOLPH,

Assistant Vice President.

[Stamped]: Received Sep. 24, 1948. Fresno Main Office, Bank of America N. T. & S. A.

[Stamped]: Confidential! For your private use, and without responsibility on the part of this Bank or its Officers.

FWRudolph: VD

Air Mail

[In Margin]: Jacks Fruit Co.

Jack Oddo

Received September 24, 1948.

[Endorsed]: Filed June 20, 1950.

DEFENDANT'S EXHIBIT NN

Stipulation

Commercial Account Ledger

Defendant's exhibit HH hereby placed in evidence, are copies of the commercial ledger sheets for the period from October 30th to and including November 27, 1948, of United Produce Co. on the books of Merchandise National Bank.

* * *

The term "apparent noon day balance" as used in this stipulation, relative to the commercial ledger sheet, is used to mean the balance as it physically appears on the face of the sheet and is without prejudice to the contention of any party that the balance was or was not an actual noon day balance.

Note Liability Ledger

Defendant's Exhibit II hereby placed in evidence is a copy of a sheet of the note liability ledger of United Produce Co. with Merchandise National Bank covering the period from October 25, 1948, to December 6th, 1948.

The column headed "credits" on the note liability ledger shows entries as of November 5, 1948, aggregating \$1,325,054.84. Said amount of \$1,325,054.84 is the sum total of the face amount of a note for \$200,000.00 executed by United Produce Co. to Merchandise National Bank under date of October 5, 1948, plus all other notes executed by United Produce Co. to Merchandise National Bank during the

Defendant's Exhibit NN—(Continued)

month of October, 1948. All the notes executed by United Produce Co. to Merchandise during the months of October and November were in the form of a note introduced in evidence and marked "Plaintiff's Exhibit 5" and the maturity dates of all the notes executed by United Produce Co. to Merchandise during the month of October, 1948, specified a maturity date of November 5, 1948.

The note liability ledger contains a column headed "debits," and there is entered in this column as of November 1st, \$57,870.32; as of November 3rd, \$60,457.24 and \$70,628.40; as of November 4th, \$42,829.26 and as of November 5th, \$108,581.58 and \$200,000.00. All of the last mentioned items are the face amounts of notes in said form executed by United Produce Co. to Merchandise National Bank during the period from November 1st to and including November 5th, 1948, and specified a maturity date of December 3, 1948.

Under the column headed "assigned accounts" on the note liability ledger there is an entry under November 5, 1948, of \$540,366.80. This amount of \$540,366.80 is the aggregate amount of said notes executed by United Produce Co. to Merchandise National Bank during the period from November 1st to and including November 5th, 1948.

The entries made in the column headed "debits" in the note liability ledger during the period from November 6th to November 16, 1948, are the amounts of notes executed by United Produce Co. to Merchandise National Bank during that period;

Defendant's Exhibit NN—(Continued)

and each such note specified a maturity date of December 3, 1948; and each of the amounts entered in the column headed "assigned accounts" in the note liability ledger under said figure of \$540,366.80 is the total in dollar face amount of the notes of United Produce Co. to Merchandise National Bank as of the date of such entry. To illustrate what is stated in the next preceding sentence, the figure \$1,287,064.70 entered in the column headed "assigned accounts" on the note liability ledger, represents the total face amount of notes executed by United Produce Co. to Merchandise National Bank from November 1 to November 16, 1948. All of the notes executed by United Produce Co. to Merchandise National Bank during the month of November, 1948, specify as the date of their maturity December 3, 1948, and all of said notes, as previously stated, were in the form of said note already introduced in evidence and marked Plaintiff's Exhibit 5.

The amounts of all notes executed by the United Produce Co. to the Merchandise National Bank were credited upon the dates of the notes on the commercial ledger sheet of the United Produce Co. and the amounts were prefixed with the letters "CC" to distinguish such credits from deposits made by the company. All credits on United Produce Company's Commercial ledger sheet on plaintiff's books which composed the apparent noon day credit balance thereon at the close of business on November 13th, 1948, came from Merchandise National Bank loan department, except \$8,500 which

Defendant's Exhibit NN—(Continued)

was based on a deposit of a check never collected. The remainder of the apparent noon day credit balance on said ledger sheet at the close of business on November 13, 1948, after the deduction from said balance of \$8,500.00, was composed of about 90% of credits coming from loan operations secured by alleged accounts receivable assigned by United Produce Company and other security and about 10% of credits coming from discount of drafts for United Produce Company. A copy of the credit ticket used on November 1, 1948, for crediting said \$57,870.32 on the commercial ledger sheet is hereby placed in evidence as defendant's Exhibit JJ as illustrative of the practice followed on all such transactions.

Assigned Accounts Receivable Ledger

Defendant's Exhibit HH, hereby placed in evidence, are copies of ledger pages of the assigned accounts receivable ledger of United Produce with Merchandise National Bank covering the period from October 28 to December 6, 1948.

The figures entered in the sub-column headed "balance" in the column headed "payment account" represent aggregate remittances, as of each day shown, received by Merchandise National Bank from debtors from the first of the month purportally owing United Produce Co. assigned accounts receivable. Whenever the word remittances is used in this stipulation, it shall mean remittances represented by such debtors' checks endorsed and de-

Defendant's Exhibit NN—(Continued)

livered by United Produce Company to Merchandise National Bank, whether such remittances have or have not been collected.

In the sub-column headed "payments" in the payment account column are entered the total of remittances from debtors delivered to Merchandise National Bank by United Produce Co. as of the dates shown and as listed on the respective remittance sheets. For example, such ledger shows that as of November 1, 1948, Merchandise National Bank received from United Produce Co. remittances in the form of checks of debtors payable to United Produce and endorsed by it, aggregating \$57,870.32. And, as subsequently shown, as the daily totals of remittances received were entered each day in the payments column, the amount entered in the balance column was increased by the amount of such daily total.

The figure appearing in the sub-column headed "transfers" as of November 5, 1948, of \$1,325,054.84 was \$200,000.00 plus the aggregate of remittances in the payment account as of that date which were entered in the column headed credits on the note liability ledger and at the same time notes of United Produce Co. held by Merchandise National Bank in the same amount were surrendered to United Produce Co. The sum of \$1,325,054.84 includes the \$1,125,054.84 shown in the column headed "balance" as of October 30, 1948, plus the amount of a note for \$200,000.00 dated November 5, 1948, whereupon a note by United Produce

Defendant's Exhibit NN—(Continued)

Co. to Merchandise executed October 5, 1948 was retired. The remaining aggregate of \$340,366.80 appearing in the balance sub-column of the payment account column as of the close of business on November 5, 1948, represents said remittance delivered to the bank during the period from November 1st to and including November 5, 1948.

And so the entries made in the payment account as of November 5, 1948, show that on that date the note of United Produce Co. to Merchandise National Bank dated October 5th and maturing on November 5, 1948, for \$200,000.00 was retired and that all of the other notes executed by United Produce Co. to Merchandise during the month of October, 1948, were also retired by the transfer and application from the payment account of said sum of \$1,325,054.84 and that said remittances delivered to Merchandise National Bank from November 1st to and including November 5th aggregated \$340,366.80.

A comparison of the daily totals aggregating said figure of \$340,366.80 entered in the "balance" sub-column of the "payment account column" as of November 5, 1948, with the daily totals aggregating the figure of \$540,366.80 entered in the column headed "assigned accounts" in the note liability ledger as of such date, shows that the difference represents a new note for \$200,000 entered in the note liability ledger on November 5, 1948; and a comparison of the figure as of any particular date after November 5, 1948, entered in said "balance"

Defendant's Exhibit NN—(Continued)

sub-column with the figure entered in the column headed "assigned accounts" in the note liability ledger, will show the same difference of \$200,000.00. Nothing on the note liability ledger sheet reveals or reflects the unpaid balance of United Produce Company's notes held by plaintiff at any time; but in order to ascertain that balance so far as it is shown by any ledger sheet, recourse must be had to United Produce Company's "Assigned Accounts Ledger" sheet on plaintiff's books.

On the Assigned Accounts Ledger sheet in the sub-column headed "balance," in the column headed "Notes payable," appear figures, day by day, showing the balance of the notes after giving effect on the day of remittance to checks to United Produce Company endorsed and remitted by United Produce Company to plaintiff, whether such remittances had or had not yet been collected. As previously stated, on the same sheet, in the sub-column headed "payments," in the column entitled "Payment Account," appear, each day as such checks were remitted by United Produce Company, the total face amount thereof, whether or not they were yet collected.

The amounts of the checks constituting plaintiff's Exhibit 4 for Identification were listed in this column on this sheet on the respective day they were received by plaintiff from United Produce Company, and effect thereto was given at the same time in the "balance" sub-column of the "Notes Payable" column.

Defendant's Exhibit NN—(Continued)

In the sub-column headed "Loans Made" appear the amounts of new notes executed on the dates shown.

The remaining or left hand column on the assigned accounts receivable ledger entitled "collateral account" shows the following: the sub-column headed "additions" shows the daily totals of new assignments on the dates shown of accounts receivable; the amounts in the "withdrawals" sub-column show the elimination of accounts receivable for which remittances have been received or for which drafts have either been paid or recalled.

Also hereby placed in evidence and marked defendant's exhibit LL is the interim assignment of November 1st. Said interim assignment is typical of the other interim assignments executed by United Produce Co. to Merchandise National Bank. The total amount of this assignment of \$147,742.23 was entered on November 1, 1948, under the sub-column headed "additions" in the collateral account column of the assigned accounts receivable ledger. Similar practice was followed for other assignments.

The remittance sheet of November 8, which is one of the remittance sheets already in evidence, shows remittances on that date and payments on account of drafts of \$99,639.75. This amount was entered on November 8, 1948, under the sub-column headed "withdrawals" in said collateral account column. The total of \$84,787.69 of the checks listed on this remittance sheet and delivered to the Mer-

Defendant's Exhibit NN—(Continued)

chandise National Bank with it as shown thereon was entered as of November 8, 1948, on the Assigned Accounts Receivable ledger under the sub-column "payments" in the "payment account" column and under the sub-column "payments" in the "Notes Payable" column.

The \$14,852.06 appearing on the remittance sheet represents the withdrawal from the assigned accounts receivable of drafts which had either been paid or recalled as shown in the drafts discounted ledger.

Under the arrangement between Merchandise National Bank and United Produce Co. every account receivable as it came into existence was to be assigned to Merchandise National Bank.

Whenever a check, the amount of which had been entered in the "payment account" sub-column on the Assigned Account ledger sheet was returned to plaintiff uncollected, or whenever a discounted draft the amount of which had been entered on the Drafts Discounted Ledger sheet was withdrawn by United Produce Company or returned unpaid by the drawee, the amount of the check or draft was charged back by a debit entry on the commercial ledger sheet. This was the plaintiff's practice in the case of United Produce Company and other customers having loan operations of a similar nature.

Draft Discount Ledger

Defendant's Exhibit MM hereby placed in evidence, are copies of the draft discount ledger sheets

Defendant's Exhibit NN—(Continued)

for the period from November 10th to November 18, 1948, inclusive, of United Produce Company on the books of Merchandise National Bank.

The use of this ledger can be explained by considering the first page, the page marked 24DDDD. In the third column from the left, under the heading "Memorandum-Endorser or Maker" appear two columns of figures, one a broken column and the other an unbroken column. Both columns of figures give the numbers of drafts assigned to the drafts discounted by Merchandise National Bank for United Produce Co. The broken column which begins with the figure 1563 gives the numbers of the drafts discounted, whereas the unbroken column, beginning with the figure 1327, gives the numbers of the drafts paid or recalled. The date November 10, 1948, in the column headed "Date" is the date of the transaction on the same line as the date and the date of the transactions below this line until there is reached the next date in the same column.

In the column headed "Debits" on this first page appear the amounts credited to United Produce Co. on account of drafts discounted for it. In the column headed "Credits" appear four dates above the column of figures. Each of these dates refers to the figure immediately to its left in the debits column and is the date on which the draft referred to in such column was either paid or recalled.

The column of figures in this "Credits" column beginning with the figure \$1239.44 are the amounts

Defendant's Exhibit NN—(Continued)

of the drafts previously discounted which have been paid or recalled.

The other dates appearing on this first sheet in the column headed "Credits" indicates the same thing as the dates at the top of the column.

The figure \$5933.42 in the column headed "Direct" is an entry of a debit which is the total of figures on this and the next preceding sheet in the column headed "Debits" and below the figure of \$5933.42 in the column headed "Direct" appears the figure \$23,442.28. This is a credit entry which is the total of the credits for that day, November 10, 1948, which credits are in the column headed "Credits" and commence with the figure \$1239.44.

The figure \$249,915.66 in the column headed "Total Liabilities" shows the total amount of discounted drafts of United Produce Co. outstanding and unpaid as of the close of business on November 9, 1948.

These entries on the first sheet of this Exhibit are typical of the entries on its other sheets.

The amounts of all drafts discounted by the Merchandise National Bank for United Produce Co. were credited upon the dates on which the drafts were discounted on the commercial ledger sheet of United Produce Co. and the amounts were prefixed with the letters "CC" to distinguish those credits from deposits made by the company.

Of the outstanding drafts discounted on the basis of which credits were entered in United Produce

Defendant's Exhibit NN—(Continued)

Co.'s commercial ledger on or before November 15, 1948, drafts in the amount of \$117,779.31 were never collected.

On the defendant's exhibit MM none of the title has any significance except as explained in this stipulation.

[Endorsed]: Filed June 24, 1950.

